







## SEA LAW AND SEA POWER





# SEA LAW AND SEA POWER

AS THEY WOULD BE AFFECTED BY RECENT  
PROPOSALS; WITH REASONS AGAINST  
THOSE PROPOSALS

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"Our business is to keep foreigners from fooling us."

(ADMIRAL BLAKE, 1653.)

"The English people are many times in Treaties over-  
matched by them whom they over-match in Arms."

(SELDEN.)

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## PREFACE

FROM all time the sea has been calling to the land, and the land has not heeded.

From Phœnicia to England, from Tyre of the Bahrein Islands to London, Liverpool, and Glasgow of the British Islands; from Salamis and Actium to the Invincible Armada and Trafalgar, the sea has shown itself the superior of the land—if only the landsman could be made to understand how to use the seaman. The lesson of all history is that, whether in peace for trading or in war for fighting, the sea has always dominated the land; that in war most especially, navies are more potent than armies, the Trident a mightier weapon than the Sword.

Yet the land has not understood. The facts were there, but the land was unable to comprehend them. An articulate seaman might have explained; but among seamen there has never been either a prophet or poet or even so much as a journalist. Wherefore the land has never been either awed or moved or paragraphed into assenting to what it did not understand. Even now, in these latter days, the seaman remains dumb;

and there professes to speak for him, only the naval expert, who explains every Salamis and Trafalgar yet to come, by adding up, and carrying over totals of tons, guns, and pounds sterling, and foretells the fate of nations with absolute certainty by comparing aggregate totals. *Plus* wins, *minus* loses, says he; that is the beginning and the end, and there is no more in it. At which the land goes on wondering, doubting, trembling and spending, and understanding less than ever.

For there is more in this problem of the sea than Trafalgar alone can tell. There is more than the shock of navies.

There is—for those who are so happy as to have in the sea their sole frontier—the barrier to invasion afforded by the mere existence of the sea itself, by the difficulties of crossing it and landing from it, and the still greater difficulties of keeping open communications, and securing retreat across it. These difficulties are so great that, although every great commander of armies since William the Norman has longed and hoped and repeatedly essayed and planned to overcome them, Britain has never for eight centuries endured a hostile invasion.

There is also Trade — trade, which brings prosperity and plenty or the lack of it starvation and ruin to the nations — trade, which can only be effectually conducted on the sea, and never effectually by land — trade, which if ~~ever~~ stopped on the sea can only be carried on over such

land as serves at twenty times the cost for carriage—trade, which is the breath of modern nostrils, and of none so much as ours—trade, whereof the stoppage means the corresponding stoppage to nations of their only effectual means of communication with the outer world, and, to that extent, the stoppage of national life. Of this, the naval expert thinks nothing. But of this the dumb seaman could tell something. He could tell, perhaps, if it ever occurred to him, that, by the stoppage of trade, the English once made the French pay six shillings a pound for their sugar, while the English themselves were paying no more than sixpence. Whence, had it been understood, the land might have learnt that to stop or to hinder trade is at once the most effectual and the most merciful of all the methods of war; that now as then—nay, now infinitely more than then, because of the infinitely greater trade—the sea can always be used to coerce the land, and navies to defeat armies. There is much in that six shillings; but much or little, it all escapes the notice of the historian occupied with the pride and pomp of victory and defeat, as well as of the naval expert adding up his ~~tens~~ and guns.

For Great Britain the sea is the only road. For her it is the strongest rampart of defence. For her it is the only battlefield of offence. The trident is her sole weapon. Preserved and used, it is mightier than the sword. Broken or

blunted, it leaves her but a rich and defenceless prey.

When England wrested from the Dutch their monopoly of sea fisheries and sea-borne trade, and first asserted herself as a great sea power, she did but take what nature had marked as hers. Yet so soon as her predominance became evident, there began among the military powers of the Continent a common effort to check the growth of forces which even then seemed capable of becoming formidable to military domination. The effort resolved itself into attempts, not to destroy navies, but to prevent their effectual use by introducing into the recognised laws of war at sea, changes destructive of those maritime rights whereby sea power is asserted and established.

These attempts, begun in the seventeenth century, were for two hundred years defeated by the courage and constancy of many successive British ministers. When the French revolutionary wars broke out, British maritime rights were intact; and such was the effect of their exercise that when Napoleon had beaten down all the military nations of the Continent, Britain alone remained upright and resisting. The very powers of which these very nations had sought to deprive her were now seen in their overmastering effects. Those very powers it was that in the end rescued these very nations and saved Britain and Europe together. Once again the trident had proved mightier than the sword.

In 1856, however, a ministry was for the first time found either without the understanding or without the courage to maintain the proud and prudent refusal to surrender the maritime rights of their country. By the Declaration of Páris they abandoned the right to capture enemy merchandise in neutral ships, receiving, as a compensating condition, the abolition of privateering—which nevertheless was not then and is not now abolished except in name only.

And now other proposals are made for yet another, and greater, and indeed final, surrender of all that remains of such British maritime rights as would be most effectual in war.

These proposals, formulated at the Hague in 1907, and embodied in conventions then signed by British representatives, have since been carried farther towards adoption by the Naval Conference of London, and the resulting Declaration of London of 1909.

It is as noteworthy as ominous that the two powers which, through their representatives, played a principal part in procuring the surrender at the Conference of London and in the Declaration of London, of British maritime rights, were France and Russia, which have since 1903 been presented and have presented themselves, to the world, as joined with Great Britain in an *Entente Cordiale*. What that "cordial understanding" amounts to, whether it has ever been formulated or even protocolised, we do not know. All that is definitely



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known of it is, that whatever it was or is was lightly blown away by a few peremptory German words uttered at St. Petersburg, when, in 1909 the *Entente* showed some timid desire to regularise the merely forcible annexation by Austria of Bosnia and Herzegovina. At the Conference of London, and throughout the drafting of the Declaration of London, France stood and acted with Germany and Russia against belligerent maritime rights. They three were the minority that claimed (and still claim) unrestricted power of transforming merchant ships into warships and back again at will; and it was their joint insistence on this that prevented any agreement being reached on the point. France it was which furnished, in the persons of M. Renault and M. Fromageot, those who elaborated the *cuisine* of the Declaration and were its ingenious apologists. France, in short, blind to the fact that she too is a naval state, joined herself throughout with the military states, as though still moved by that hatred of Great Britain and of her maritime strength which led Napoleon to denounce her as the tyrant of the seas. The eagerness of France to destroy the naval power of Great Britain, and therewith her own, is perhaps explained by the fact that she regards herself in these days as an exclusively military state, and as such, one whose interest it is to exalt the military at the expense of the naval powers. Her attitude towards naval power is to be sadly remembered.

It is, however, also to be remembered that her

action was suggested by the British minister who invited the changes made, and who, when they were embodied in the Declaration of London, not only signed it, but now declares that its ratification needs no sanction from Parliament.

The negotiations for this surrender have during three years been conducted, the articles of surrender have been settled, the surrender itself has been made, without, so far as is known or suggested, any previous knowledge or any previous sanction by the King, and certainly without any previous consultation of Parliament.

But Parliament at least cannot be entirely passed by. For the surrender involves supersession of those ancient and famous British Courts, the Admiralty Prize Courts and the Judicial Committee of Privy Council, the abolition of their final jurisdiction in matters of naval prize, and the submission of them and their decisions to a new foreign court sitting at the Hague. And it seems that while a minister claims authority to agree to any alterations in the law of nations, without either the previous assent or the subsequent sanction of Parliament, yet he is not able without that sanction to destroy the jurisdiction of British courts of law.

The Naval Prize Bill has therefore been introduced in order to effect the desired destruction. It is set down for a second reading on the re-assembly of Parliament in November, and is of such a character that, if once it becomes an Act of

Parliament, the whole final surrender of British maritime rights, courts, and jurisdiction together will have been made.

On the second reading of that Bill, Parliament will have to decide whether it is prepared to part with the remaining maritime rights of the country; to leave it only with a navy, more powerful it may be than any yet known, yet forbidden by new laws from using its powers in the only effectual manner; to submit every act of that navy to the final judgments of a foreign court; to enforce these judgments itself; and to strangle its own fleet with its own hands.

Before so grave, so momentous, so fatal a decision is taken, those who are responsible for it to their countrymen must consider fully all that is involved.

In the following pages an attempt is made to bring together the more important of those things that demand consideration; to set forth so much of the law of nations and its history as relates to the proposals made; to explain the effect of the proposals themselves; and to appeal for due consideration of all that is involved, before that is done which cannot be recalled.

T. G. B.

## NOTE

THE accounts—extending over 939 pages—of the proceedings at the Hague Conference of 1907 and of the International Naval Conference held in London, presented to Parliament, being throughout printed in French only, without any English translation, I have found it necessary myself to translate the extracts I have given from those important documents, in order that some of the more material passages may be accessible to English readers.

It is to be further observed that the Declaration of London, 1909, was signed in French alone, and that the French text thereof alone is binding. In the Parliamentary paper is indeed given an English translation of the Declaration; but this translation seems in several instances to be inadequate, defective, or faulty. Thus, *sont de plein droit considérés* (Art. 22) is translated “may without notice be treated”; *objets et matériaux* (Art. 24) is translated “articles”; and *commerçant* (Art. 34) is translated “contractor.”

The following documents are cited or referred to :—

“The Growth and Direction of our Foreign Trade in Coal during the Last Half Century.” By D. A. Thomas, M.A., M.P.  
(*Royal Statistical Society's Journal*, September 1903.)

*State Papers*, Vol. lxvi., 1855-56, p. 136. French Text of the Declaration of Paris, 1856. For English Translation thereof, see Appendix B.

*Procès Verbaux des séances plénières de la Conférence et des Commissions* of the Second Peace Conference at the Hague, from 15th June 1907 to 18th October 1907. 497 pages.

*Parliamentary Papers.*

Miscellaneous, No. 1 (1908), (Cd. 3857). Correspondence respecting the Second Peace Conference held at the Hague in 1907 (with reference to Miscellaneous, No. 1) (1899). 180 pages. Price 1s. 6d.

Miscellaneous, No. 4 (1908), (Cd. 4081) of 1908. Protocols of the eleven plenary meetings of the Second Peace Conference held at the Hague in 1907, with the Annexes to the Protocols (in French only). 546 pages. Price 4s. 5d.

Miscellaneous, No. 5 (1908), (Cd. 4174) of 1908. Further correspondence respecting the Second Peace Convention held at the Hague in 1907, in continuance of Miscellaneous, No. 1 (1908), (Cd. 4081.) 2 pages. Price ½d.

Miscellaneous, No. 6 (1908), (Cd. 4175). Final Act of the Second Peace Conference held at the Hague in 1907, and Conventions and Declaration annexed thereto. 149 pages. Price 1s. 3d. For extracts therefrom, see Appendix C.

Miscellaneous, No. 4 (1909), (Cd. 4554). Correspondence and Documents respecting the International Naval Conference held in London, December 1908, February 1909. With the Declaration of London, 1909. 106 pages. Price 11d.

Miscellaneous, No. 5 (1909), (Cd. 4555). Proceedings of the International Naval Conference held in London, December 1908, February 1909 (in French only). 393 pages. Price 5s. 3d.

This contains the French and English Text of the Declaration of London of 1909 for the (Foreign Office) translation thereof into English, see Appendix D.

Naval Prize Bill. A Bill to consolidate with amendments, the enactments relating to Naval Prize of War, presented by Secretary Sir Edward Grey, supported by Mr McKenna, Mr Attorney-General, Mr Solicitor-General, and Mr McKinnon Wood. Ordered by the House of Commons to be printed 23rd June 1910. Bill 201. 31 pages. Price 3½d. See Appendix E.

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## ERRATUM

Page 23, line 21—*For* “1861” *read* “1851.”

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## THE LAW OF THE SEA

To gain and keep the command of the sea when at war was always for England the condition of success; to lose that command, even for a time, was always the forerunner of failure. This truth, always known to the seaman, has now been perceived by the landsman, and has become an article of national faith. It is not necessary to insist on what all can see, that as the Empire increases so does the need increase for command of the sea.

The command of the sea does not mean that every enemy vessel is excluded from the sea. It means that, either through the enemy's fleet being blocked up by a British force in his own ports, or, what is more effectual and indeed final, through that fleet having been met and destroyed, the sea is practically debarred throughout to the enemy, while it is left practically open throughout to Great Britain. It means a state of things such that neither the fleet of the enemy nor his merchant ships can traverse the seas without the greatest



risk of destruction or capture, while both our fleets and our merchant ships can do so, either with no risk, or with very little risk, of either. It means cutting the enemy's communications at sea, and keeping our own open.

But the final end of war is so to distress the enemy as to reduce him to submission. Command of the sea is but a means to this end, and the most effectual use of that means is to stop the enemy's trade, and thus to impair the prosperity of his people and their power of paying those taxes without which war cannot be carried on. Trade now plays a larger part in the prosperity of any country likely to fight at sea than ever it did before; hence the effect of stopping that trade, or of adding difficulty and cost to its conduct is greater than ever it was before. This the landsman has not yet clearly seen.

That the stoppage of the enemy's sea trade, or the driving of that trade to overland carriage, must greatly distress an enemy is manifest. For land carriage, even in Great Britain, where it has been so successfully developed and cheapened, still costs, as near as may be, *twenty times* as much as sea carriage per ton per mile, so that even if but a few hundred miles of land carriage has to be substituted for sea carriage, the additional charge added to the thing carried by the additional cost of freight, must be enormous—nor can it fall elsewhere than upon the taxpayer. How much may in certain cases be thus added to cost and to price, was shown at the

end of our war with Napoleon in 1813 when, at and round about Bayonne, brown sugar cost the French subject six shillings a pound (the price in England being then only sixpence), while tea was "only to be had by ounces at a time as medicine." How was this? During the latter, though not indeed the latest part of the war, the land roads of France had been open in every direction. They were on the whole quite as good as the English land roads of that day—for heavy traffic they were indeed better. If land carriage could have sufficed the land frontiers of France were much nearer to China than any part of English land, and the journey for tea therefore shorter. Yet "tea was only to be had by ounces." If land carriage could have sufficed, it was open and was used for Colonial produce. Sugar, coffee, and tobacco were in fact despatched to Salonica, and forwarded thence by land carriage to France. Yet "coffee and sugar in bond which would not fetch sixpence the pound in this country (England) were worth from five to six shillings the pound in France, and all the Trans-atlantic produce was high in proportion." For land carriage could not suffice. And since all the sea roads were stopped by the English command of the sea, there was practically no tea to be had in France, and sugar and coffee cost there twelve times as much as in England. All else told the same tale. "Commercial cities half deserted . . . edifices falling to ruin . . . number of mendicants almost incredible . . . fields principally cultivated

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by women . . . paupers a third, in some places two-thirds, of the whole population." Such was the picture drawn of France in 1810 by impartial observers. Such was the distress caused by stopping the sea roads and leaving only the land roads open.

What now was the way in which the sea roads were stopped? It was by the old way which the law of nations and the laws of the sea had sanctioned ever since these had been promulgated during the eleventh century in the Sea Code of the *Consolato del Mare*. It was by capturing and confiscating the property of the enemy wherever found upon the high seas, and whether found in the ship of the enemy or of a neutral.

That was the law of the sea from all time—a law acted upon by all and questioned by none until the seventeenth century. The attempt to change it first came from the Dutch, who, after long carrying practically all the trade of the world and conducting all the fisheries of the North Sea, had recently seen their monopoly challenged by the English. In 1654, De Witt conceived and suggested the then entirely new doctrine of "Vry schip Vry goed"—that is to say, that in time of war the neutral ship, then and ever allowed to go free from capture, should invest with her own freedom any enemy goods she carried. The doctrine of "free ship free goods" was as much opposed to all known and existing laws of the sea as it was contrary to all known notions of war. For a declaration of war,

then as now, meant a declaration of the confiscation of all enemy property found at sea; and to allow it to go unconfiscated only because a professed neutral was doing to the enemy the unneutral service of carrying it, seemed to all jurists of those days absurd. Yet the Dutch, with characteristic tenacity, pressed their new doctrine on the express, and so far as is shown on the sole ground, that unless it were adopted “the United Provinces would lose the advantages they obtain from loading [their vessels at the ports of, and] with all nations.” Boreel presented it to France and Nieuport to England. Both pressed it in both countries on that express ground, and both thereby avowed that the whole purpose of it was to enable the Dutch to profit by the wars of their neighbours, by carrying for them such trade as either of these could no longer safely carry for itself.

But France was not then prepared to accept the new jingle, and would not entertain it; though later she did accept it on strict condition that it was coupled with the other jingle—equally false in principle—of “enemy ship enemy goods” (*robe d'ennemi confisque bien d'ami*). As for England, she was then under the rule of Cromwell, who was not easily to be fooled. Moreover, England had, in the war ended that year, captured hundreds of Dutch prizes, had destroyed the Dutch fisheries, and had almost ruined all Holland; besides which she had but just passed a new Navigation Act directed against Dutch competition with her own

growing carrying trade. Nieuport therefore found his new doctrine received rather with ridicule than with entertainment; and De Witt saw that, in things concerning the solemn and serious business of war, the world was not yet ripe for folly. The notion had not then been conceived that a nation might be both at war and at peace with another nation; at war with the military power of its enemy, and yet at peace with that enemy's trade; still less that a professed friend to both sides should be allowed to carry for one of the two the property confiscated by the other.

For another century nothing was heard of the free ship free goods doctrine. Then Frederick the Great of Prussia found it convenient for his purpose. By mingled force and fraud he had acquired from Maria Theresa the rich prey of Upper and Lower Silesia, and therewith the Silesian silver mines mortgaged with a debt to English merchants of £250,000, and charged with the annual interest thereof of £75,000, which by the Treaty of Breslau of 1742 he had undertaken to pay to those same merchants. Now, in the war between England on the one side and France and Spain on the other, which was concluded by the Peace of Aix la Chapelle in 1748, Prussian ships had been captured and condemned in British Prize Courts for infractions of neutrality. In 1752, therefore, Frederick sent a memorial to the Duke of Newcastle, Secretary of State in Mr Pelham's administration, denying the right to search, detain,

or capture neutral ships at sea on the ground that they carried enemy's property; denying equally the competency of belligerent Prize Courts to decide on the legality of such captures; and finally announcing that, since Prussian ships had been thus dealt with, he had attached the moneys due to the British merchants, and would discontinue the payment to them of the £75,000 interest on the Silesian loan. Thus again the doctrine of free ship free goods was advanced; and this time not merely as a request or desire, but as a claim of right, backed and enforced by the arbitrary confiscation of the private property of the English merchants. The proceeding was as Prussian as the Dutch proceeding of a century earlier had been Dutch. But neither Dutch appeal nor Prussian insolence could then find an open ear in England. For Mr William Pitt the elder was a member of the English ministry and inspired it with his spirit. The Duke of Newcastle's reply to the Prussian minister was declared by Montesquieu to be a *réponse sans réplique*. The Prussian minister abandoned the principle of free ship free goods, and his master Frederick resumed payment of the interest on the Silesian loan.

Once again, then, the new doctrine slept. It was, however, revived in 1780 by Catherine of Russia, who in April of that year, finding England at war with France, Spain, and the American Colonies, put forth a memorial by Prince Galitzin enunciating the doctrine of the Armed Neutrality. The

Russian Declaration was issued in 1780 and was followed by a Convention, in March 1780 between Russia and Denmark, of 1st August 1784 between Russia and Sweden, of 3rd January 1781 between Russia and Holland, and of 8th May 1781 between Russia and Prussia, whereby all these States bound themselves to maintain, if need were by force of arms, the principles enunciated. The central principle was the old doctrine of *free ship free goods*; but there was now grafted on to it the further claim that merchant vessels should be exempt from search or question when under the convoy of a man-of-war of either one of these neutral powers. The central doctrine was the old one of the right of the neutral to trade with either or both belligerents as he pleased, except in contraband of war, and above all the immunity from capture in neutral vessels of enemy property, always still excepting contraband. It was the old doctrine of *free ship free goods*, first advanced as a petition by the Dutch, next affirmed as a right by the Prussians, and now asserted as "a rule for future ages" by a great array of armed powers. But England again stood firm—"solitary and abandoned by the whole world; struggling with a fatal schism amongst her own children;" opposed, with diminished resources, to all the greatest maritime powers of Europe, to the continent of America, and almost to the continent of Asia, without a single ally," she repudiated the doctrine and defied the force

of the Russian Armed Neutrality as she had repudiated and defeated the claim of Prussia and the craft of Holland. Once again she found her repudiation admitted by all the powers concerned. And a second attempt at a second Armed Neutrality in 1800 broke down within a year.

The doctrine of their High Mightinesses of Holland, the claim of Frederick of Prussia, the Armed Neutrality of Catherine of Russia had thus all broken to pieces on the rock of England's stern, uncompromising resistance; and when the French Revolutionary war broke out, all the powers of Europe brushed away all nonsense of free ships free goods, and reverted one and all to the law of the sea, and the established practice of capturing enemy goods wherever and in whatever ships found on the high seas.

And so things remained until 1856. Then, under no pressure, and by diplomatic arts and acts still mysterious, England was induced to abandon all she had hitherto asserted and fought for and been preserved by, and to become a party to the Declaration of Paris, the second article whereof declared that "The neutral flag covers enemy's merchandise with the exception of contraband of war." At the end of two hundred years Holland and Prussia had succeeded. They saw their doctrine, so long resisted and so constantly repudiated, enshrined at length in a document—not indeed part of any treaty, nor sanctioned by the authority either of the British Crown or the British



Parliament—yet a formal, solemn document adhered to by all the great powers with the exception of Spain and the United States.

Of the Declaration of Paris, the late Lord Salisbury, who was no mean judge, wrote in 1897, forty-one years after the event, that it was “a rash and unwise proceeding.” The change thus affected to be made in the conditions of naval warfare was extremely simple yet infinitely vast. In any future war it prevented the belligerent, which might be predominant at sea from capturing its enemy’s property afloat, and to that vast extent prevented the predominant power from putting stress upon its enemy. No doubt it left still open the capture of enemy goods when in enemy ships—just as theretofore. The new element was the covering of the enemy goods with immunity when carried under the neutral flag. The whole effort, intention, and effect of it was manifestly to give to the weaker of the two naval powers at war an immense advantage, and to inflict on the stronger power a disadvantage not merely as immense but infinitely more so. For the stronger power, being in command of the sea, would have no need of the protection of the neutral flag or of the services of the neutral ship. It could continue to carry its own goods in its own ships, without any serious risk of having them captured by an enemy unable to command the sea, and therefore unable to make any but the rarest and most casual appearance on its waters. But the weaker power would need it sorely. Driven *ex*

*hypothesi* from the sea, whether for its state pennant or for its merchant flag, that state would now be able to find salvation for its trade under the neutral bunting to which, for the first time, a protecting virtue was attached. That weaker power would joyfully avail itself of the neutrals to carry for it the trade it could no longer carry for itself. The stronger power, despite the most complete command of the sea, would find itself unable to stop a bale of merchandise from reaching its enemy, since all would be under the neutral flag; would be powerless to cut the enemy's sea communications thus kept open by neutrals; and would, in short, find itself deprived of all that power of strangling its enemy's trade, and of making him pay famine prices for sea-borne merchandise, whereby it was formerly possible to distress and to coerce, not merely a nation, but a whole continent. Quite evidently, this was a blow at any power which might be predominant at sea. Quite evidently, it was contrived for the advantage of any enemy of that power. And quite as evidently it was calculated to bring great gain from any naval war waged between two unequal powers, to all those neutral powers called in to the new and profitable calling of selling the protection of their flag and the services of their ships to the weaker belligerent. Most evident of all is it, that all this was to the great gain of any enemy to England, and to the equally great loss of England herself in any future war in which she might be engaged.

The effect thus certain to be produced has been masked to British eyes—other than those of British seamen—by the fact that since 1856 Great Britain has never been at war with any power possessing a navy capable of disputing or even questioning her command of the sea, or with any power possessing over-sea trade. Her wars have been with the Chinese, Ashantis, Abyssinians, Afghans, Zulus, and Boers. The war with a great power possessing a navy and a mercantile marine is yet to come; and if ever it does come, will be the first conflict of the kind Great Britain has affronted since the end of the war with France, and for a time with all Europe headed by Napoleon. Of such a war all real remembrance is lost. The lessons burnt into every Englishman's mind a century ago have been forgotten. Nobody now remembers what was then so well known, that it was by the stoppage of their sea trade and the severing of their sea communications, and by the terrible distress thus caused, that Napoleon's allies were detached from him one after the other, and he himself finally reduced to submission. Men who still recall with pride how England then saved herself by her exertions and Europe by her example, and who remember the glories of the Nile, and Trafalgar, neither remember nor have ever really become aware that both battles would have been fought in vain had they not been accompanied and followed up by that constant ceaseless sap of the enemy's trade, the capture of his property, the raising of his prices,

and the consequent drying-up of the sources of his taxation, which more effectually distressed him than any lost battles. Had there been any memory of this, the Declaration of Paris could never have been signed on behalf of England. But all that belonged to war of other than the "little war" kind, which involved none of these vital questions—all that belonged to serious deadly war was forgotten. The new generation of Englishmen believed only in great exhibitions and perpetual peace—at least for England. They saw indeed wars of the old sort raging, and their deadly harvests shaken out over agonised states. They saw the American Civil War of 1861, the beginning in 1863 of that series of Prussian wars which successively wrested Schleswig and Holstein from Denmark, struck down Austria, and dismembered France. But they saw all this only with a pitying eye as distant spectacles, as things that passed by afar-off and were never more to come near their own island. And they grew to believe (as most of them in their secret minds believe to this day), that England would for ever remain what she has been for nigh upon a hundred years, only a sad looker-on at the wars of other nations, never again to be touched herself by real war involving national independence and possibly national existence; that, whatever may happen elsewhere, peace would henceforth, for England at least, be permanent and unbroken. Thence arose the consequent conviction that, however often other European nations might be

belligerent, England would always remain a neutral; and thence again a general hazy notion that the interest of England, which had once no doubt been to maintain the rights of the belligerent against those of the neutral, must now and would thenceforth be to change over and to affirm the rights of the neutral against the belligerent. The emotional and the humane who hope to abolish war and therewith belligerency and neutrality together, seized the opportunity to enforce their most respectable aspirations and their most foolish expectations. The shipowners who thought their own private interests best served by what promised them immunity from the consequences of war and even a greater trade because of any war, these joined in. And at last a great unthinking chorus arose that trade was sacred, that if there might conceivably be military war there must at least be commercial peace, and that it was barbarous, inhuman, and wicked to capture goods at sea at all under any circumstances whatever. Thus there came to be preached the last and newest doctrine—the immunity of private property from capture, which some excellent persons to this day press. The evolution was completed, the change of front made. England was presented to the world no longer as the stern assertor and guardian of belligerent rights, but as their opposer and the champion of neutral privileges. War was forgotten, peace alone remembered. But for that, the Declaration of Paris could not have been

endured, nor could the final surrender have been in these our own days entertained, and even gone far to be made, of those last rags of English maritime rights which the Declaration of Paris had left.

For some rags the Declaration of Paris" did leave.

It left to the belligerent the undiminished right of search of all merchant ships met on the high seas, of search, that is, by visit of the ship and her papers for the verification of her nationality as alleged by the flag she flew, and the further verification of her voyage and cargo as lawful and innocent.

It left to the belligerent the right to exercise this power even if the neutral, or alleged neutral, merchant ship were under convoy of a neutral man-of-war. Here it is to be remarked that the Armed Neutrality of 1780 had claimed that the mere presence of a convoy ought alone to suffice so to protect from any visit or search the convoyed vessel or vessels, that the word of the convoying officer as to papers, cargo, destination, and character of the voyage of every one of the convoyed ships, must be accepted as final. This manifestly absurd and fantastic claim was in 1856 abandoned, and the right of search and visit was left intact.

It left to the belligerent the right to blockade an enemy's port, provided (as had indeed always been the true law of the sea) that the blockade must be a real blockade maintained by an adequate force, and not merely a "paper blockade" without

effectual force to maintain it. And it left therewith, as a necessary consequence, the right to pursue and capture the blockade-breaker at any time and anywhere on the high seas, until the end of his blockade-breaking voyage.

It left to the belligerent the right to capture and confiscate enemy property in enemy ships—though no longer in neutral ships, and therefore in a highly attenuated and ineffectual form.

It left to the belligerent the right to capture and confiscate all contraband of war, or goods destined to the enemy for use in the war, even when found in neutral ships.

It left, also, corresponding obligations on the belligerent.

It left the belligerent under the obligation to abstain from fitting out or giving commissions to private ships commissioned to act against the enemy and thereby invested with a public character, which had hitherto played a very effectual part in distressing by capture an enemy's trade, and which had been known as "Privateers" or "Corsaires." It was indeed this prohibition of privateering which was presented to, and with incredible folly accepted by, Great Britain as an adequate equivalent for her abandonment of the right to capture enemy property in neutral ships.

It left the belligerent under the further obligation of submitting any captures made by him to a Prize Court, having power either to declare them good prize, or to order their release and the payment

of damages by the captor. To that end the belligerent captor was left under the obligation to abstain from destroying the papers of the capture, from embezzling any property found therein, and even from "breaking bulk" or opening up the cargo. Still more was he prohibited from destroying the captured ship herself, and thus making away with the principal, and often the only conclusive, evidence either for or against her. In case, indeed, the captured ship were an admitted and indisputable enemy ship, he might, though even then only when driven to it by necessity, destroy her. But never might he destroy a neutral or an alleged and possible neutral. If in that case such a necessity arose as would justify him in destroying an enemy ship, he was still forbidden to destroy the neutral. He must, in case he could not send her in to port for adjudication of the disputed points, release her and leave her free to prosecute her voyage or to return to her own ports as she might please. The reason, justice, and necessity of such an obligation are apparent.

It left the belligerent also under the obligation to commission public ships of war only in its own ports and not elsewhere; to abstain from any attempt to convert merchant vessels, which had put to sea as such, into men-of-war by the production on the high seas of a hitherto concealed commission; as well as to abstain from any similar colourable reconversion from man-of-war to merchantman.



It left the neutral powers under the obligation to submit to search, to abstain from supplying either belligerent with contraband of war, and to abstain from attempts to break blockade—under the penalty in either case of capture and confiscation.

It left forbidden the transfer of an enemy ship to a neutral, either in a blockaded port or during a voyage. And finally — which is most important of all—it left the Prize Courts, set up in the belligerent country to declare and administer, not the municipal law of that country, but the law of nations. It left to those courts all the powers and jurisdiction they had exercised from all time. To them was left the right and the power to decide, upon a full review of all the evidence and taking into account all the circumstances, every material question. Was this an effectual blockade? The Prize Courts alone could decide. Was there an actual or attempted breach of blockade? The court decided. Were these enemy goods? The court alone decided. Was this a duly commissioned public vessel of war? The court pronounced. Was this act a breach of neutrality? The court declared. Was this enemy merchant ship duly transferred by a valid assignment to a neutral? Was this or that thing contraband of war? Again it was for the court. The evidence was heard. The facts were arrayed for and against. The facts were allowed to speak; and they spoke—all the facts, whether on

one side or the other. And in the end the courts decided finally. But they decided openly. They gave their reasons. Their law was not alone founded upon the reason and the rights of the case; it respected and followed and was bounded by the precedents recorded for centuries, and forming part of the body of law which the court had authority to enforce. • The Prize Courts—although like all courts they were sometimes misled—were trustworthy. They constantly decided against the wishes of their own Governments, or the interests of their own fellow-subjects; they were on the whole more just and impartial than any municipal courts administering municipal law. And if we English think that the English Prize Courts were, if anything, more just and more impartial than French, Prussian, German, or Russian, that is no reflection upon any foreign judge of maritime cases—it is explained by the vastly greater experience in such cases of the English admiralty judges, sitting in a purely maritime country, with an infinite store of maritime maxims to guide them, and an infinite variety of cases always before them. Their judgments in fact are so admirably reasoned that they are to this day authoritative and are appealed to as such by every Prize Court in the world. • But, whatever these courts may be, and whatever their character, they are the only courts ever yet conceived for pronouncing, administering, and enforcing the general law of nations as distinguished from special national municipal law. More

than that, they are the only conceivable courts, so long as each nation is held to be independent of all others and without superior in any other. To affect to set up any other court in any other way involves abandonment of the conception of national independence and the adoption of some new conception of national dependence upon an external authority having power to command and to enforce.

## II

### WAR AND TRADE

“THE wars,” says Bacon, “are no massacres and confusions ; but they are the highest trials of right, when princes and states, that acknowledge no superior upon earth, shall put themselves upon the justice of God for the deciding of their controversies. . . . Wars—I speak not of ambitious predatory wars—are suits of appeal to the tribunal of God’s justice, when there are no superiors on earth to determine the cause.”

The law of nations alone is what has prevented, and still prevents, wars from being massacres and confusions while they last, and peace from being broken when it comes. It is not in peace but in war that the need of a law of nations is most felt, and the appeal most constantly made to rules, founded upon principles of natural justice and equity, which the wise and just men of all nations have always agreed to and affirmed, and to which all civilised states have always assented. And when Bacon so wrote, he probably had in mind the reply of his royal mistress Queen Elizabeth to Dzialine, the Polish Ambassador who, when

England was at war with Spain, complained of Poland being hindered in her over-sea trade with that country. "For your part," said the queen, "you seem indeed to us to have read many books; but yet to have little understanding of politics. For whereas you so often in your oration make mention of the law of nations, you must know that, in time of war, betwixt kings, it is lawful for the one party to intercept the assistance and succours sent to the other, and to take care that no damage may grow thereby to himself."

The rule of the law of nations thus tersely yet fully stated over three centuries ago, covers the whole of the controversy begun then and continued since, by those who claimed to send the very assistance and succours in question, and thereby to make war between two states into massacres and confusions, joined in by all who think to profit by betraying one friend to another—in the name of trade.

While the rulers and people of Great Britain had actual experience of war which really touched them and their lives and property and threatened their existence as a nation, they consistently repudiated this claim. That either their own traders or neutral traders should be left free to conduct a trade which gave the enemy "assistance and succours," in the war, was a doctrine they utterly denied and repudiated in words and, if need were, in arms. From Philip of Spain to Napoleon, from the Armada to Waterloo, the doctrine found no place in any British mind.

The reply given by Elizabeth to the Poles was successively repeated to the Dutch, to the Prussians, to the Russians, even to all Europe; and Waterloo left Britain where the Armada had found her, in full possession of her maritime rights and ready to defend them against all comers.

In the peace which followed, there arose a school which preached against all war. They dwelt on the greed, selfishness, wickedness, and treachery which they truly alleged were the motives for all the wars of history. They dwelt on the horrors of war—on the men slain or maimed, the homes destroyed, the countries devastated with fire and sword, on the moral effect of all, even more destructive and deadly than its most terrible physical manifestations. They appealed to all the best emotions—they called on all just and merciful men to join in devising some method of rendering such things impossible. Their appeal found ready listeners, and when the Great Exhibition of 1861 was opened, they almost thought their cause won and universal peace secured.

Those most respectable and worthy persons, had they looked around, would have seen that their dream could never be realised.

No progress in humanity, in civilisation, in arts, science or knowledge ever has availed, or can, to make war cease in the earth. On the contrary, every new achievement of man is instantly pressed into the service of war; and it is in the life of this present, the last of the generations, that the

most terrible wars originating in the worst of motives have been fought in every one of the earth's four quarters.

Moreover, those who wish to abolish war altogether commonly forget that the laws of war are only needed at all when, in spite of all their wishes, war has actually broken out. When there is no more war, then indeed its law will not matter. But the case, and the only case, here dealt with is that the resources of peace have failed and that war in fact exists. The question is not "Shall war continue?" but, "War having in fact arisen, in what manner should it be conducted." The views of a peace party on that question are as valuable as those of an anti-boxing society on the Queensberry Rules.

What remains then is to shorten wars and to alleviate their horrors by the adoption of common rules for them. This is precisely what the law of nations does. In this it is that man most shows himself, in the moments of the greatest trial, superior to the beasts of the field. By this it is, and by this alone, that wars are in some degree held in check and prevented from becoming blind, merciless, treacherous massacres and confusions.

Many honest, humane and highly respectable gentlemen, shocked at the horrors of war and conceiving it possible to make wars without horrors, have long advocated changes in the law of nations which they think would have that effect

—especially at sea. These gentlemen have imagined that Great Britain should abandon her traditional stern assertion of belligerent rights, in order to become the champion of neutral privileges; that the doctrines of blockade, contraband, continuous voyage, convoy, enemy property, and the like, should be relaxed; that the right of capture at sea should be greatly restricted; and that, if not in all respects at least for trade, war should be made to resemble peace.

The final form of all these aspirations—the form wherein they are all included and implied—is the doctrine of “the immunity of private property from capture at sea”; which therefore deserves critical examination.

The notion that the private property of some few in a nation should have an immunity not extending to the public property of the whole in that nation, seems at first sight amazing. For it, of course, involves the strange correlative proposition that some of a nation may be at war, and some at peace, with the same national enemy. That view, however, is now seriously advocated; usually on some such general grounds as that trade is altogether righteous, and war altogether unrighteous; that to introduce righteousness into unrighteousness is a merciful and beneficent task; and that if wicked war and innocent trade cannot co-exist unimpaired—then it is war that must be impaired, and not trade.

The doctrine of the immunity of private pro-



perty from capture at sea—and only at sea, for on land it is at the absolute mercy of any military commander—is now, however, set also on the ground of expediency, and as offering an issue out of the situation created by the Declaration of Paris of 1856, which forbids the capture of enemy's property in a friend's, or neutral ship. That, it is very truly said, precludes Great Britain from using all the pressure she formerly exercised on enemy goods by capture—for they may now be carried by neutrals alone and thus be protected by the neutral flag. Since then, it is said, so much belligerent power of capture has been given up, it were best to give up the rest; to abandon all power of capturing enemy private property, whether goods or ships, at sea; and thus, by substituting a new common immunity from capture for the old common liability to capture, to restore to British merchantmen in war time that equality with the neutral which they formerly enjoyed. To which, for the moment, it may suffice to reply that, on the ground of expediency at least, it would be far better to regain the lost equality by denouncing the Declaration of Paris and thereby resuming the complete power of capture, rather than to seek it by extending the Declaration and so losing even the incomplete capturing power still left.

Here it should be remarked that the advocates of the new doctrine repudiate its full application. They have never yet proposed immunity from

capture, for such private property as consists of the arms, ammunition, and such like, classed as contraband of war; nor for any private property whatever destined to a blockaded port. These they would leave to be captured, however private they may be. In these extreme cases, they shrink from the application of their own principle—thereby avowing what they too feel, that the true test is not whether the property is private, but whether its transport is of material assistance to the enemy in the war. Tried by that test, the private property in general which makes up the trade of a country may be of even more assistance than that portion of it which is contraband or destined to a blockaded port. For while the former represents some of the means of offence, the latter represents the very spring and source of those revenues, out of which alone the whole means of offence can be and are provided. Meantime, let this pregnant partial surrender of the doctrine be noted.

With these limitations, however, the doctrine is pressed. The ablest, latest, and most complete presentation of it is to be found in a letter written by so eminent an authority as the present Lord Chancellor to *The Times* of 14th October 1905, which contains more than had ever before been said, and probably as much as ever can be said, in support of the doctrine.

In advocating the exemption of private property from capture at sea, Lord Loreburn says:—

"I urge it, not upon any ground of sentiment or of humanity (indeed no operation of war inflicts less suffering than the capture of unarmed vessels at sea), but upon the ground that, on the balance of argument coolly weighed, the interests of Great Britain will gain much from a change long and eagerly desired by the great majority of other powers."

The question is thus simplified and narrowed to this: will the interests of Great Britain gain from the change? Lord Loreburn holds that they would gain much. Nevertheless, some close examination will show that they would gain neither much nor little, but would, on the contrary, lose altogether; and lose so greatly as to endanger, with themselves, the very existence of the country.

First let it be observed that, as Lord Loreburn says, the change has been "long and eagerly desired by the great majority of other powers." Of course it has. Lord Loreburn himself tells us why. Speaking of "the continental powers," and of the effect on them of the existing law, which allows a belligerent to capture and confiscate all enemy merchant ships and any enemy goods they may contain, he says:—

"They would profit in many ways from its abolition. They would be able to trade freely in their own ships in every sea, even when at war, untouched by the powerful fleets of Great Britain."

Of course they would profit. But does that

show the change to be in British interests? Does it not rather show—is it not by itself alone enough to show—the very reverse?

The case contemplated is that of war at sea between Great Britain and one of these very continental powers. In such a case the eager desire of the great majority of such powers, which are mainly military and not naval, must necessarily be to withdraw themselves as much as possible from any harm a navy can do to them, must especially from that which might be done by so preponderating a navy as the British. Their interest must be to increase military and to decrease naval power. No doubt any one power of them all must profit, in a war with Great Britain, by anything that debarred Great Britain from acting upon her sea-borne trade and so cutting her communication with the outside world.

That is manifest. But what is equally manifest is that any profit in war to Great Britain's adversary must be—cannot but be—a corresponding loss to herself. What her enemy gains can but be through her loss. Enemies “able to trade freely in their own ships in every sea” must be more formidable in the struggle than enemies unable so to trade, and must be able to continue the struggle longer and with better chance of success. All which would be not for, but against, the interests of Great Britain in a war with such enemies. The very eagerness of the great majority of other powers to gain such a profit at her cost

is in itself a sufficient warning that her interest lies in its denial.

Lord Loreburn, however, believes that Great Britain does not gain but loses from refusing this advantage to her enemy. He says :—

“Half our food is imported; if the sea is closed, we are half starved. We are mainly a manufacturing people, and an enormous proportion of our raw material is imported. If the sea is closed we are largely reduced to idleness. We are immeasurably the greatest carrying nation of the world. . . . If the sea is closed we can no longer carry. . . . The facts I have mentioned alarm us because they mean that war might restrict our supply of food and raw materials, and ruin our carrying trade. Which of them would alarm us if we were agreed that private property at sea should be free of capture? We could then in security import our supplies in time of war as in time of peace. Our merchant ships could traverse the ocean with no risks except those of nature. But so long as the present law prevails, we are not only liable to be ruined by naval defeat; we are also liable to be ruined by doubtful war.”

All this is true only on the assumption of the sea being closed—closed to us so that we can no longer carry, yet open to our enemy so that he can prevent us from carrying. It all turns upon that “if” in which there is so much virtue. *If* the sea is so closed and so kept closed by an enemy—but not otherwise—then no doubt we might be half starved, largely reduced

to idleness, and deprived of our carrying trade. But it must be wholly closed, and kept closed. If not, nothing of all this can happen—nothing of it at all. Will the sea then—can it—be thus closed?

It can be on one condition and on that alone—on condition that the enemy of Great Britain has not only defeated but destroyed her fleet—has destroyed it finally, and all of it. Not until that is done can the sea be closed against her, so as to cause the dismal calamities recited. Not a part only but all the fleet must have been destroyed; and besides that, if the sea is to be kept closed, some effectual means must be taken to stop the issue of the new British warships which would then certainly be building, and some of them perhaps about to hoist the pennant and renew the struggle. Until all that is done and kept done, the sea is not closed. There must be no British fleet in being, none in building. There must not be left so much as a detached squadron in the China Seas, in Australian waters, or in the Mediterranean. If there is, the sea is not yet wholly closed nor can it be kept so closed. If there is, the enemy navy, which has certainly not destroyed a British fleet without much loss of its own in men and ships, may have to look to something else than closing the sea. It may have to look to itself.

But when that final destruction of all the British fleet has happened, then indeed there

will be an end, not only of carrying trade, free access of food and raw materials, but of all.

If and when the enemy has wrested from us the command of the sea by defeating and destroying our fleet, and by making it impossible for us to replace that fleet by another, then indeed we must endure not starvation nor idleness nor loss of carrying trade alone, but loss of our independence, loss of our existence as a nation, and, on top of all, such a ransom as would reduce to insignificance the two hundred millions extorted by Germany from France. Then would be the end not merely of Britain's manufacturing and carrying trade, but of Britain herself, final and complete. When this has happened, the possible invasion so often planned through eight centuries and as often abandoned, only because of the British fleet, will become easy to effect and certain to succeed. When this has happened, Great Britain must submit to the conqueror. There will only remain to parcel out the Empire and to levy a huger ransom than the world has yet dreamed of. Carrying trade and such like will be but as the dust in the balance when the spoils of our Empire are divided, and we are peeping about to find ourselves dishonourable graves.

But the only way of preventing this is manifestly to have a navy able to keep command of the seas for us and to deny it to our enemy—such a navy as, even if it were half destroyed in action,

would yet suffice while awaiting another new half to prevent the sea from being at all events completely "closed" to us. And what else remains is to see that we are not beguiled into agreeing to anything that would shorten the arm or lessen the strength of the navy from which that much is expected and must be had; and that, most especially, we are not so simple as wantonly to weaken it by depriving it finally and wholly of what has hitherto been found "the chief instrument of ultimate victory." Lord Loreburn's argument, in short, when examined, is an argument for the maintenance of a preponderant navy; an argument for the maintenance of all its existing powers of pressure on the enemy; an argument not for, but against, the exemption from its operations of enemy private property; an argument for repudiating rather than for extending the prohibition of capture of ~~such~~ property declared by the Declaration of Paris.

But, it will perhaps be asked, may there not be something short of this? Admitted, it may be said, that so long as anything remains of the British fleet the sea cannot be wholly closed to us and kept closed; yet may it not be partially closed? Even though a battered remnant of the fleet has survived, may the sea not be nevertheless partially closed to us—closed as Lord Loreburn supposes, as regards access to our own home ports? No. Certainly not. That particular form



of partial closing is hardest of all to effect; so hard that it needs no friendly fleet to be near in order to prevent it. The elements of that problem have rarely been closely considered.

To close the sea round and adjacent to the British Isles so as to prevent access to them is a task impossible to perform. These Islands are so set over against Europe that, strategically, they cut the continent in half and enable Great Britain to deny direct sea communication between all those European countries east and north of Calais, and all those south and west thereof—as though Nature herself had both taught and enabled us to command and coerce the land by the use of the sea. But, in addition to that, so happy is their own configuration, so numerous their harbours and so wide their avenues of approach, that it is marvellous how anybody could suppose those avenues capable of being closed. And they must all be closed or nothing is done. Close the hundred-mile stretch from Ushant to the Scillies, and you leave open access to the hundred-and-fifty-mile stretch from Scilly to Cape Clear. Close that and there is still open the whole of the three-hundred-mile west coast of Ireland. Close that and you leave open the three-hundred-and-fifty-mile avenue between the north of Ireland and the Orkneys. Close that and there is still left the three-hundred-mile avenue between the Orkneys and the Naze of Norway. Every one of these five great avenues must be closed or the thing is not done; and nothing less

will close all of them than to draw, in the sea, and to keep in all weathers, a line of circumvallation a good twelve hundred miles long, every mile whereof must be kept guarded, or sea access to Great Britain is not denied, nor the sea for that purpose closed. It is a task to which all the existing navies of the world would be unequal. All these navies together, much less the single navy of a single enemy, could not effectually debar us from our food and our raw materials, and thereby cause us to be half starved or reduced to idleness. Of this all who will look at a map of Europe may assure themselves. Of this all seamen and naval authorities have assured themselves. Of this even Lord Loreburn is assured; for he too writes "I believe an effective blockade of the British Isles is impracticable." With which away goes all fear of famine, and therewith, it must be remarked, all Lord Loreburn's most dismal apprehensions, and all the argument based thereon.

But if, as must be—nay is—admitted, the sea about the British Islands cannot be closed, can all the rest of it be closed? Can it be so closed as to realise Lord Loreburn's remaining apprehension that we shall find in time of war that we "can no longer carry," and that we should in fact lose our carrying trade? That seems, on the face of it, unlikely. For if, as already shown and admitted, our enemy could not so close the sea as to deny access to Great Britain, it is still more unlikely that he would be able to close all the rest of the

seas all over the world, in which the rest of our carrying is done. If he could not compass the lesser part, he could hardly achieve the greater.

Yet, while the sea-approaches to Great Britain cannot be closed, it is far otherwise with those of most of our continental neighbours. Their ports are few; the sea-avenues to them are narrow indeed compared with our "own" twelve hundred miles; and a British navy, master of the seas and free to act upon those narrow avenues, could press with immense and deadly, though bloodless, effect upon the main artery of its enemy's life. The sea which cannot be closed to us, can be closed to them. We have the weapon which they lack. They indeed would, as Lord Loreburn says, "profit in many ways" from its abolition. But where is the profit to Great Britain?

Here indeed comes in another consideration, arising, not out of the nature of the case, but out of the nature of the Declaration of Paris of 1856. Lord Loreburn says that in war time:—

"Foreign nations would soon cease to load their goods in British ships, because, though the goods could not be confiscated, the ship might be captured, and the owners of the cargo would necessarily suffer delay, depreciation, and the cost of trans-shipment. They would employ foreign ships free from war risks. So would our own merchants for a different reason, viz., that under the Declaration of Paris, British merchandise carried in a neutral vessel in a state of war is exempt from capture, while British merchandise

carried in a British vessel is liable to capture by the enemy."

To many this seems a strong reason for denouncing the Declaration of Paris; for reverting to the ancient rule of the law of nations, making enemy goods equally capturable in a neutral and in an enemy ship; for thus restoring to the British carrier the equality with the neutral, which under that rule he enjoyed; and for so ending the special advantage now given to neutral shipping. Experience shows that equality in war time would result, not in any loss of British carrying trade, but in its increase. This, however, by the way.

Lord Loreburn, as will be seen, would cover the British carrier, the neutral carrier, and the enemy carrier together with the same immunity for private property, whether ships or goods. Since neutrals, he reasons, may now carry enemy property exempt from capture, let the enemy carry it too. Since enemy property in some bottoms cannot be touched, leave it untouched in all bottoms; for otherwise you will, under the Declaration of Paris, lose your carrying trade. This still seems to him, not a reason for denouncing the Declaration of Paris, but for extending it to the exemption of private property from capture altogether.

But should we lose our carrying trade? That we should lose it without the Declaration of Paris is not suggested and cannot be expected — for before that Declaration it was the contrary that

happened. Should we then lose it with the Declaration? 'In most conceivable cases, we should not lose it. In some, we should even increase it.

That, at the outbreak of war, our carrying trade would lose some, perhaps much, foreign cargo, and also some British cargo, because now not so safe in war time as neutral „bottoms, is indeed to be expected. It would suffer undoubtedly. At first it would suffer much, for trade is timid and the panic would be great. But if the British fleet were predominant over that of the enemy, the panic would be short. As British command of the sea became established and manifest, British carrying trade would suffer less and less. Shippers would soon see that although goods in British carriers were not by the law immune from capture, they were in fact made so by the British fleet. We come again to this: that on the sufficiency of that fleet it all depends. If the fleet so commands the sea as to banish therefrom the enemy, and thus render all voyages safe for British merchant ships, these will only suffer so long as the command of the sea remains doubtful; once the doubt removed, they will suffer no longer. Nay, they will probably gain even more trade, in the shape of that which the banished enemy formerly carried on for other countries. If, on the other hand, the command of the sea is lost, there ensues the loss not merely of our carrying trade, but of all else, including our safety against

invasion. It all turns on the fleet and the power of the fleet. Everything that lessens that power increases our danger.

Would then the exemption of private property from capture lessen that power? There can be no doubt that it would. When the British fleet captured enemy goods in whatever ships found, the injury thus done to the enemy was the most effective weapon of offence in the British armoury. Lord Loreburn is well aware of this. He says:—

“In the old times the pressure of the British fleet upon commerce was the chief instrument by which our forefathers often achieved ultimate victory.”

In these later days the Declaration of Paris forbids that pressure upon neutral-carried commerce; but it leaves the pressure on enemy-carried commerce and on enemy ships unaffected and intact. Take away that by exempting all commerce, and there is no pressure left at all, nor anything remaining of the chief instrument of ultimate victory. To deprive the British fleet, not merely in certain cases but in all cases whatever, of such an instrument could not but be to lessen its power. The fact that in this respect the power has already been seriously lessened by the Declaration of Paris is no argument for, but rather an argument against, any further lessening of it. As things stand, we cannot afford to give up the very least of the powers we still retain.

The matter, indeed, goes further. For, with private property immune from capture at sea, it may well be asked in what effective way Great Britain could use her fleet as a weapon of offence at all. The trade of our enemy, vitalising and sustaining him, would pour into his ports under the very eyes of our cruisers. That is the proposal. Our fleets could not touch it. "But what, it is said, of the enemy's fleet? That, at least, would remain. That, at least, would not be immune from capture and defeat; and, though forbidden to touch an enemy merchantman, our fleet would still be able to search out the enemy's fleet and destroy it.

Yet even this is not so. For, with his trade freed from all interference, the enemy would be under no necessity to protect it. Unless and until he felt himself strong enough to risk a fleet action for its own sake, he need never—would never—send his fleet to sea. And thus, if this new doctrine were accepted, the more powerful the British navy the more certain its futility as a weapon of offence. With his trade unrestricted and his navy in port, the enemy could safely leave it to a wholly inoffensive mastery; and the "command of the sea" for purposes of offence would have sunk to the level of an unmeaning phrase.

An argument remains which was once presented as conclusive, but which is now somewhat less fashionable. It is this:—That inasmuch as British merchant ships are far more numerous than those

of any possible enemy, our own private property at sea—our ships themselves, and our goods when carried in those ships—would be infinitely more vulnerable to any enemy than his could be to ours ; and that consequently, we must suffer far more loss in private property and far more damage thereby than we could inflict on any enemy whatever.

Lord Loreburn duly admits this argument into his array, though he puts it less in the front than those who less understand either the sea or the controversy itself. He says:—

“I will suppose Great Britain at war with one or more great continental powers, and let it also be supposed that the British fleet has established its naval supremacy, and has even blockaded the entire coast-line of its enemies, which latter is an uncommonly strong hypothesis. . . . No supremacy could be so absolutely effective that we could be sure of sealing up every hostile port, and preventing the furtive exit of swift commerce destroyers from time to time. . . . Many British merchant ships might be captured and sunk. Our merchant marine is vulnerable in proportion to its size and ubiquity.”

As will be noticed, the supposition that the enemy navy has beaten and destroyed the British, or has established naval supremacy for itself, is here put aside—for Lord Loreburn is aware that Great Britain must in that event suffer all the damage and the enemy none of it, and that such an event

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would end not only our merchant ships, but all else, and the war therewith. He supposes the more probable contrary—that the British fleet has established its own naval supremacy, and he deals with the question on that supposition.

But that supposition destroys the argument. In that case the enemy merchant marine goes—all of it. It is all, as he admits, captured or confined. In that case our own merchant marine would be untouched, save for those ships that might be captured or sunk. No doubt some of them might be, probably would be, captured or sunk. But with the British navy predominant these would be but few. Those few would hardly be missed out of so large a merchant marine as ours. They would be easily and quickly replaced from those laid up or building, whereof there are always adequate reserves ready to come into line. That would not be so with the enemy. Take—merely for instance—Germany. In 1907 our 21,000 merchant ships of 11,400,000 tons belonging to the United Kingdom (even leaving out of all count the 17,000 ships of 1,500,000 tons belonging to the rest of the British Empire), were roughly five times Germany's 4571 ships of 2,700,000 tons. The capture or destruction of one, or one hundred, British ships, therefore, would only do one-fifth of the national harm to Great Britain that a similar capture or destruction of German ships would do to Germany. A similar number in our case is a lesser proportion. The fact that we have five times

as many ships means that we could spare more, as it also means that we could replace easier. Wherefore the truth is that the greater size of our larger mercantile marine makes it not more vulnerable but less vulnerable. To make the more vulnerable argument hold water, it must be contended that the enemy will capture or destroy, not as many of our merchantmen as we capture or destroy of his, but five times as many. How can that be expected? We have established our naval supremacy and blockaded our enemy's coast-line wholly or partly. At the very least we have blockaded his principal ports. Our warships and cruisers are all freely ranging over all seas; his are so overpowered that only a few furtive commerce destroyers are able to escape to any seas. Is it conceivable that these destroyers, few and hunted as they would be, could do five times as much harm to our merchantmen as our own free ranging superior forces would do to the enemy's? Could they even, under such difficult conditions, and during their hazardous and probably short career, capture or destroy even so many in number of ours as we, under our much freer conditions, should capture or destroy of theirs? It is altogether improbable. It is scarcely conceivable.

But if all this be so, our merchant service is not the more but the less vulnerable because of its size and ubiquity. Even if it should receive more blows, it will suffer less harm than will the enemy from fewer blows. And it will far more probably, not even receive so many. For we must remember

that the sea is covered with its friends and defenders, while its enemies are but a very few furtive and hunted commerce destroyers, divided between ambition to destroy and anxiety for their own preservation, with the latter certainly predominating.

In fact the life of a British merchant ship, in the condition supposed, would be one of absolute peace and security in comparison with that of a swift commerce destroyer represented as so formidable an enemy. The former would find on every line of trade, cruisers whose special business it would be to ensure her safety. The latter, from the moment of her furtive exit, would be hunted for her life without truce mercy or respite, until she ended, as at last she must, either at the bottom of the sea, or in a British harbour with the British ensign above her national colours. The harm she could meantime do would resemble the harm a fox could do to a henroost, with the hounds in full cry after him. Is it necessary to carry the reply further?

If it is, let us suppose a fox so bold as to capture a hen under such circumstances. He cannot eat it or carry it home to his cubs—there is no time for that. All he can do is to kill it and leave it. That is precisely all the furtive enemy commerce destroyer could do, in the supposed conditions, with the captured British merchantman. He must destroy it—taking off the crew for the sake of humanity and perhaps the chronometers

for the sake of a trophy—and must instantly resume his flight from those accursed British cruisers who have been after him ever since his furtive exit. He cannot send his captured merchantman into one of his own ports for condemnation and the subsequent division between himself and his crew of ship and cargo—not if she is worth a million. For she would inevitably be recaptured on the way by one of those same British cruisers. And even if she escaped them, she could enter none of his own ports, for they are all blockaded—that is the supposition. He could only sink and fly, having done thus much harm indeed to Great Britain, but no good to himself or his crew. Very different would be the case of a British cruiser capturing an enemy merchantman. Here there would be no difficulty. The capture would be sent home across the unchallenged seas to a British port for condemnation, and upon that ensuing, for a splendid distribution of prize money among the captor's crew. In the one case then, harm would be done to Great Britain, but no other good to her enemy; in the other case harm would be done to her enemy and good to herself; a double instead of a single result would be achieved. So that the capture of an enemy merchantman by a British cruiser would be worth, in hard cash on the balance, twice as much to Great Britain as the capture of a precisely similar merchantman of similar value would be worth to her enemy. And, supremacy at sea being established and the seas

guarded, the double event for Great Britain must much more often be brought off than the single event for her enemy. What now is left of the "more vulnerable because more numerous" argument may be judged.

There remains yet the final argument upon which, when driven from all their other grounds, those retire who would exempt private property from capture. It is this: that the pressure on trade and on the resources of the enemy, once the chief instrument of victory in the hands of the British fleet, would now be no instrument at all, or at least would exercise no material pressure at all. And that because all, says Lord Loreburn, is now changed; because whereas, in the old times "the want created by closing the sea could not then be compensated by land-borne supplies," it can now be so compensated; because, whereas in the old times "land transport from any great distance, even from shorter distances, was impracticable on the necessary scale," it is now become practicable; because, in fine, since the old times "science has provided effective means of land carriage." Upon which text Lord Loreburn thus enlarges:—

"The only damage we could do to our imaginary enemies would be the suppression for the time of their carrying trade. Part of their merchant navy would be captured and the rest would be confined to port. The injury would not be deadly. They could live upon their own produce and upon the produce of their neighbours carried by rail.

They could dispense with sea-borne merchandise, or, if required, could purchase it from neighbours who had imported it into their own country."

For which reason we are asked to conclude that "the weapon of capture at sea has largely lost its edge." Before we do conclude that, however, we must believe some things with which no facts agree. We must believe that in these days, land-borne can replace sea-borne supplies so as to prevent the distress arising from want of the latter; we must believe that for transport the railroad can now replace the ship, and the land the sea.

This is the very citadel of the advocates of free private property. Unless this can be maintained, all the rest falls with it; and it can only be maintained if it be proved that in these days the land has become, as of old it admittedly was not, as good for trade as the sea. Is that then indeed the case? All the facts go to contradict it. The facts show, on the contrary, that, instead of the land beating the sea for trade, it is the sea that has beaten, and is ever more beating, the land. Sea carriage has steadily become, and is still becoming, vastly cheaper, safer, and more certain than land carriage; while its capacity for expansion is, as that of land carriage is not, as infinite as the sea itself. Sea carriage, therefore, wherever there is a possible choice between the two, is more and more superseding land carriage.

The cost alone would decide that. And in cost, the land cannot compete with the sea. It has been established by so competent an authority as Mr D. A. Thomas, M.P., that to carry one ton one mile costs, as near as may be, twenty times as much by land as by sea. That is why it is cheaper to send coal by sea from Wales to Alexandria, than by land from Wales to Brighton. That is one reason, possibly the principal though by no means the only reason, why the sea must and does always, in carriage, beat the land.

The results show that in fact the sea does beat the land.

Germany is a principal commercial continental state. Her land frontiers are roughly twice as long as her sea frontiers—and of her sea frontiers, three parts out of four abut, not on the ocean, but only on the Baltic. Yet the land-borne trade across her land frontiers was in 1896 (according to Board of Trade Return C. 8881 of 1898 and Foreign Office Report C. 8649 of 1898) not two-thirds, but scarcely more than one-third of her whole trade. Her sea-borne trade was 65 per cent., her land-borne only 35 per cent. of the whole. Moreover, between 1889 and 1898, the sea-borne proportion had increased to this 65 per cent. in the latter year from 38 per cent. in the former. Not only then was the sea beating the land, but it was in those ten years beating it more badly. Nor can we suppose that, with

the great development of German shipping and sea-borne trade since 1898, the trend of things has since been otherwise than in the same direction. Consequently we may reasonably conclude that, of the whole German trade, import and export, which was in 1908 £750,000,000, the sea-borne portion represented at least something approaching £500,000,000.

This does not suggest that railways are replacing or can replace ships. Rather it suggests the contrary conclusion.

Were it possible to divert this vast trade wholly from sea to land, it could only be done by increasing twenty-fold the cost of its carriage. But in fact it is not possible so to divert the whole of it. Part of it—the lesser part—might be so diverted, weighted, however, with so increased a cost of carriage as must vastly raise prices all round. The rest—the greater part—must continue to be sea-borne, and of that, such part as was carried in German ships would remain open to capture by an enemy. Such other part as was committed to the neutral carrier for the protection of the neutral flag, must find its way either to a German unblockaded port or else to a near neutral port, thence to be carried by railway to its German destination, with its twenty-fold carriage thence by land added to its value and its cost, beyond the cost in peace of the same delivered by sea at a German port. Either then, it must all be left open to



capture or else it must be weighted with a great extra charge and its cost thereby increased.

None of this would happen were private property made exempt from capture. The whole of the £500,000,000 of exempted private goods would, as before, come and go in the exempted private German ships. Then indeed that vast hostage for peace would disappear from the seas, which is represented by the aggregate value of the trade and of the ships that carry it; then, indeed, the sea would have lost the last vestige of its power to coerce the land, by either intercepting or vastly increasing the cost of all that moves on the seas.

No doubt science has provided more effective means of land carriage. But it has also provided even yet more effective means of sea carriage. If there is any alteration in the old balance between the two, it is an alteration in favour rather of the sea than of the land, whether in respect of speed, of safety, of certainty, or of cost. And it still remains true that, for trade, the sea is not alone the best road, but in some respects the only road; so that if any trade is by any means diverted from sea to land, not only the cost, but the difficulty of handling it, is greatly increased. Such a diversion and increase of cost and difficulty, sea power effects at the least; at the most it stops the trade altogether and destroys it.

When the Declaration of Paris was agreed to, much sea power was lost. Were the exemption

of private property from capture at sea once conceded, the whole of that part of it would be gone which acts upon the trade, the material resources and the taxes of the enemy. That the continental military powers should seek this, is natural. Their sea-borne trade during war is in pawn to Great Britain. They naturally combine together to take it out of pawn. But for Great Britain herself, whose power is on the sea alone, to divest herself of her power; there, would be  
 "madness and suicide.

"A change long and eagerly desired by the great majority of other powers" is on that very account to be suspected; since these other powers are military continental powers, who admittedly stand to gain by the change. In proportion to the length and eagerness of their desire, should be the determination with which Great Britain must resist a change whereby she alone stands to lose.

Could then Germany "dispense with sea-borne merchandise" to the extent of £500,000,000 yearly? Would she, because she "lives on a continent" be able to dispense with the food, the raw material, the manufactures, the necessities and luxuries her inhabitants find it as imperative as it is profitable to get by sea, and also to dispense with the no less necessary and profitable outlet by sea for her own products, to so enormous an extent? Would she, if the sea were closed to all this vast trade, be able to dispense with it,

and yet to feel none of "the want<sup>1</sup> created by closing the sea?" That question needs no reply. Nobody can doubt that the stoppage of Germany's sea-borne trade must exercise the most powerful pressure upon her.

But would she, in that event, escape the pressure by "living on her own produce and upon the produce of her neighbours carried by rail"; would she still be able to get all the sea-borne stuff she needed—as Lord Loreburn thinks—by "purchase from neighbours who had imported it into their own country"? Would the stoppage of her sea communications, if effected, be compensated by the diversion of her trade, in whole or in main part, from the sea to the land? Certainly not. For every such diversion would increase the cost of carriage and therewith the cost of the goods. Every such diversion would increase the cost "free on board" of all her exports thus diverted, and so make them harder to sell; and it would equally increase the cost of all her imports thus diverted, and so make them harder to buy. Every mile of diversion of the carriage from sea to land would mean, for every ton carried over that mile, that the carriage would cost twenty times what it cost before the diversion. Every ton of the trade represented by a value of £500,000,000 would be weighted extra for Germany, with twenty times the cost of carriage over a mileage longer or shorter, according to the distance from the ports of the "neighbours who had imported it into their

own country.” That would happen at least; and besides that, there would happen difficulties and delays commensurate with the increased demands upon the neighbour ports, quays, docks, and railways, to which the diversion had been effected. And finally, what would perhaps be more serious, there would also happen the neighbour’s customs duties, levied for his own use by that neighbour at his own port. Instead of the process of diversion being simple and easy and no more costly, as Lord Loreburn seems to expect, it could only be carried out with infinitely greater difficulty, greater complications, and greater cost. That greater cost must be applied to the whole of the £500,000,000, since all of it is to be, and must be, diverted upon the stoppage of the sea. Calculated at its lowest conceivable figure, it must amount to so heavy an extra burden on German trade, traders, producers, consumers, and what is more important, on their taxable capacity, as would soon exercise a terrible pressure at once on them and on their Government. Capture at sea then, has not yet, in spite of the Declaration of Paris, “lost its edge,” as Lord Loreburn thinks. Once it has diverted an enemy’s trade from the enemy ports to the neighbour ports, from the sea to the land, even though but partially, it has achieved its purpose by bringing severe distress upon that enemy, and thereby bringing the enemy himself nearer to submission and Europe nearer to peace.

That this at least could be done in time of war

by the British fleet in command of the sea, can admit of no doubt. That none of it could be done were private property exempt from capture is as indubitable. For in that case no diversion from sea to land would be necessary for any part of the trade, except for contraband or goods destined to a blockaded port. All the rest—ships and goods together—would go free by sea as though no war nor British fleet existed.

But capture at sea (so long as private property is not exempt therefrom) does more than this. Exercised by a fleet commanding the sea, it puts an end, so long as the war lasts, to the enemy's carrying trade. Whatever else it does or fails to do, it certainly does that. That indeed, is not questioned; though the effect of it is belittled. Lord Loreburn says :—

“The only damage we could do to our imaginary enemies would be the suppression for the time of their carrying trade. Part of their merchant navy would be captured, and the rest would be confined to port.”

As already shown, this is not the only damage we could do. But even if it were, “only” is far too mild and belittling a word to apply to it. To clear the seas of the enemy's traders while leaving them covered with our own is an immense result to achieve. It is a result bringing not alone damage and perhaps ruin to all the enemy's shipowners, but a corresponding advantage to our

own shipowners, by the removal for the time of so much competition with themselves. The damage done to the enemy in the case of a power with a great merchant marine, of having every vessel thereof captured or confined and unable to work, would be stupendous. With British merchantmen freely ranging the seas, subject only to a right of capture which there was nobody to exercise, and with a large competing merchant navy suddenly put out of the trade, it is probable that the war, instead of impairing our own carrying trade, would improve its position. But all this is conditional on enemy private property, whether ships or goods, being left subject to capture. Exempt that, and the command of the sea loses its principal value. Exempt that, and the British fleet would be unable either to do this "only" damage which would be so great, or any damage whatever to the enemy's trade or traders. It would then have lost the last, yet still priceless, vestiges of that power over an enemy's trade which was of old admittedly the chief instrument of ultimate victory, and which even to-day will be one of the best instruments of offensive war. That it should be proposed to give this up in the interests of Great Britain is scarcely conceivable.

Much more than this might be said as to the humanity which prefers cutting throats to capturing ships or goods; as to the civilisation which arrays one-half of the city against the other half; as to the progress from shorter, more effectual, and

more merciful, towards longer, less effectual, and less merciful, war. Something too might be said of those insinuating foreigners who mouth philanthropy to the simple British emotionalists of conferences.

But we are on the ground of British interests alone. And on that ground enough has been said to show that to exempt private property at sea from capture, would be so contrary to British interests and so destructive of British naval power, as would amount to a betrayal of duty and the exposure to destruction of Great Britain herself.

“Our business is to keep foreigners from fooling us,” said that stout Englishman Blake two hundred years ago. Were he now living he would have said the same of some of his own countrymen.

### III

#### WAR RISKS AT SEA

WAR can no more be made at sea than on land without risks. To sit down and count the cost of war risks at sea is therefore imperative; yet it has rarely been counted either completely or accurately, either so as to cover the whole of the risks or to reckon up the whole of their cost. Whenever it has been attempted, the attempt has been to estimate, not the cost to the nation, but the cost to a section or sections of the nation. And no attempt whatever has ever been thought worth making—except in the rarest, most casual, and most incomplete manner—to estimate what is most important of all—the cost to the war itself, or in other words the effect of war risks as affecting the issue of the war. Yet that is infinitely the most important. For in the awful and deadly struggle of war, when the stake is the very existence of the nation, what matters—what alone matters—is to win. In order to do that, many risks must without doubt be taken—many risks great and alarming in themselves, and which are yet not to be shrunk from—but to be taken



in view of the greatness of the issue. As for lesser risks, they are, at such a moment, not even worth thinking of.

The shipowner, the mill owner, and the mill hand have each and all an undeniable right to have their special war risks considered. So has every other section of the community as well as they. But the overwhelming interest of the whole must override all sectional interest. That must be first, mainly and if need be alone, considered. In war the private interests must give way to the common duty to public interests. Otherwise the nation is divided against itself, with parts struggling against the whole; otherwise some of its members are doing the work of the common enemy. So far as they are concerned, the nation has already ceased to be a nation, and the war itself has only provided them with an occasion for doing themselves, partially or greatly, what the national enemy, at the worst, could only do completely.

The greatest war risk of all is that of being defeated in the war. In comparison with this, no other is of any moment or consequence. Whatever other risks may be taken, this must not be taken.

Yet it is these lesser and less important risks which have been, almost alone, treated. The risks of a shortness in the supply of food and raw material, and of a consequent diminution of full meals every day and high wages every week,

are dwelt upon as though they were to be set against the loss of all meals and wages together—the injury to a portion as though comparable with the destruction of the whole. The risk of losing by capture some of our merchant ships is regarded rather than the loss of all of them and our independent existence therewith. High prices are put forward as a great if not impossible penalty to pay for the preservation of independence. And the risks of war are treated as though they were the risks of manufacturers, of mill hands, and of shipowners; whereas, rightly and relatively considered, they are the risks of failure in that war on the issue whereof not manufacturers, mill hands, or shipowners alone, but all their fellows in the State and the very State itself depends.

In these democratic days it is claimed that the people rule, and that they set all the tunes whether of peace or war to which the nation is to dance. And the people expresses itself and its desire for particular tunes mainly through members of parliament and articles in newspapers. Strangely enough, members of parliament and newspaper writers rarely show either knowledge of, or taste for, the great problems of war. They can add up figures and compare totals, and they believe, either that this is all that needs to be done, or else that this is all they at least can do. Perhaps it is. But whether or no, the people never go beyond this or seek to trespass into the *arcana* of war. That they leave to the

Government, which is there to attend to such things, and is paid for attending to them. Of alliances, *ententes*, guarantees, conventions, treaties, declarations, and all the network whereby diplomacy enmeshes nations and their forces, the people reckon not. These indeed set the conditions within which alone any war can be either begun or continued; they have already, before any war is begun, settled in the main which other nations are to be the allies, and which the enemies of each of the warring states, as well as which are to be neutral in the struggle. They have marked out the ring and, what is more, they have laid down the rules of the ring. All this, however, escapes the people. It seems to them beyond their ken and above their heads. They have left that to their Government, and they assume it to be all rightly ordered. Or if not, they believe that, when the time of stress comes, we shall free ourselves from any of these musty documents which may too much enmesh us; shall reject any alliances and tear up any treaties, guarantees, conventions, or declarations then seen to be too clearly deadly to us; and shall rely at last upon our strength alone, wherein they justly place much reliance. When hard pushed, they believe, we shall and can simply take off treaties and conventions as a man might take off his coat and turn up his sleeves for a bout of fisticuffs. Even for such a bout, as they know, there are rules, as that there is to be no hitting below the belt; but those rules they will

not consider. They assume that somebody has taken care that they are fair between the fighters. If told that by some new rules, one of the two men has to wear his belt round his waist and the other on the top of his head, they would wonder how it could be so; and meantime would refuse to believe that it was so. If the better man were quickly and easily beaten under such rules, they would ascribe it to anything but the rules. Their members of parliament and journalists would probably cite this strange beating as a reason for compulsory boxing in board schools under one or more Government inspectors. For the people only see things that happen; they rarely see why they have happened or how they have been prepared.

This is not irrelevant. It goes some way towards explaining why, when some unusually far-seeing patriot proposes to “consider” the question of war risks, the ambit of consideration is narrowed; so that instead of beginning to think of the risks there may be of defeat in the war, which is the only risk worth talking or thinking about, men begin to think and talk about the particular risks of particular sections—and most especially of the noisiest of them.

Whence it is that, although there never yet was a commission to consider of the conditions, as laid down by treaties and rules, under which alone Great Britain may wage war, there has yet been a commission to “inquire into the conditions affecting the importation of food and raw material into our

United Kingdom of Great Britain and Ireland in time of war, and into the amount of reserves of such supplies existing in the country at any given period; and to advise whether it is desirable to adopt any measures, in addition to the maintenance of a strong fleet, by which such supplies can be better secured and violent fluctuations avoided." The word "fluctuations" means fluctuations in price, and nothing else; so that this commission was really one for contriving some method of making war on the cheap. Had it been one for making war, cheap or dear, so as to achieve victory, it might have been more to the more important purpose.

The commission met in April 1903 and made (an undated) report some time in 1905 to the effect that:—

"Not only is there no risk of a total cessation of our supplies, but no reasonable probability of serious interference with them, and that, even during a maritime war, there will be no material diminution in their volume unless . . . [after] a reverse that would cost us the command of the sea [and] would place our whole maritime trade at the mercy of an enemy."

Strangely enough, however, the commission, having come to the conclusion that a maritime war would make no material diminution in the volume of our supplies, also came to the conclusion that it might, even with undiminished supplies, increase their cost, at all events to the extent of a "moderate

percentage,” and thereby produce a “panic rise of prices of staple articles of food.” Wherefore they thought that :—

“A system of national indemnity against loss from capture by the enemy would operate both as an additional security to the maintenance of our over-sea trade and as an important steadying influence upon prices,”

and recommended that :—

“A small expert committee should be appointed to investigate the subject and frame a scheme after consultation with underwriters and others interested in our mercantile marine. . . . We believe that a guarded and well-considered scheme of national indemnity would act as a powerful addition to our resources, because it would tend to keep down the cost of transport, and therefore would go far in the direction of preventing high prices in time of war, while at the same time it would be a stimulus to the enterprise of British shipowners.”

In all this, as will be noticed, what is dealt with is, in fact and at last, the sole questions of the prices of food and the interests of shipowners—to consider which the small expert committee was recommended.

The small expert committee in question, consisting of twelve members, met on 4th December 1906 to inquire :—

1. “Whether it is desirable that the State should undertake to make good to ship-

owners and traders losses incurred through the capture of shipping by the enemy in time of war ;

2. "If so, whether such indemnity should be granted gratuitously, or should be coupled with the payment of premiums calculated to recoup the State—either wholly or in part—for the cost to be incurred ;
3. "What conditions should be attached to the grant of the indemnity, and what arrangements should be made for the proper working of the scheme."

In March 1908 this committee replied negatively to the first paragraph of the reference to it, and the two subsequent paragraphs consequently fell through.

Upon learning of this inquiry, the Association of Chambers of Commerce very naturally disclosed "a strong body of opinion that, in the event of the adoption of a scheme, the direct benefit of a State guarantee should not be confined to shipping interests only"—which showed an appreciation of the fact, sometimes forgotten, that, in the inevitable and general injury to all interests that war would bring, shipping is not entitled to the sole regard of the State.

Partial and restricted, however, as was the character of the investigation, it was the occasion for an examination into war risks which, though applied to ships and their cargoes alone, was yet in part of a general character, and in much of a general bearing—and therefore of subsisting interest.

The novel suggestion that the State should make good to British shipowners and shippers generally, all losses incurred through capture at sea in war, originated in the apprehension that the second article of the Declaration of Paris of 20th March 1856 (viz., "The neutral flag covers the enemy's merchandise with the exception of contraband of war") would drive British shipping, at the outbreak of war, out of employment or into foreign neutral ownership; that through the scarcity of shipping arising thus, and also from loss by capture, freights and insurance would rise; and that prices of food and raw material would consequently rise to famine rates.

The situation has to be dealt with on the assumption that during war the Declaration of Paris will subsist, and that the mischief, if any, thence arising will ensue.

The apprehension that war would lay up our merchant ships and drive our carrying trade into the hands of neutrals is not new. It was felt and expressed as soon as the Declaration was published. Mr Cobden so wrote on the 28th May 1856, Mr John Bright and Mr W. S. Lindsay so declared in Parliament on the 17th March 1862, Mr John Stuart Mill on 5th August 1867; the Select Committee of the House of Commons on merchant shipping, which sat in 1860, reported: "Our shipowners will thereby be placed at an immense disadvantage in the event of a war breaking out with any important European power. In fact, should the Declaration of Paris remain in force



during a period of hostilities, the whole of our carrying trade would be inevitably transferred to American and other neutral bottoms." Sir Thomas Sutherland avowed the same apprehension in a letter published in October 1884.

Nor has time materially diminished the apprehension during the fifty years that have since elapsed. Some shipowners indeed think that British ships could and would still be kept running in war time, and that there would be little disposition to transfer them to the neutral flag. Others, however, still believe with the older school that war under present conditions would put most of our merchant ships out of work, and lay them up useless or force their sale to neutrals.

The apprehension is usually expressed in terms too general. That our merchant ships would in fact be largely transferred to neutrals on the outbreak of any war whatever is inconceivable. That they would be so transferred in the case of a war with "any important European power," say with Austria alone, with Italy alone, or even with Germany alone, is unlikely. That such a transfer would, however, be made in the case of a war in which the United States or France were among our opponents is quite conceivable.

The suggestion that there would be a legal difficulty in making such transfers, although it has been put forward with a certain affectation of solemnity, cannot be seriously regarded; for it was disposed of by the Privy Council in the case of the

“Baltica.” That there would be a difficulty on the part of the neutrals in finding the money to pay for the transferred ships cannot either be supposed, for the assumption is that the ships would be available at a cheap price in order to carry on a profitable trade in which, under their own flag, they could no longer engage. The operation, therefore, would finance itself. Moreover, during the war between the United States and Spain so recently as 1898, such a transfer did actually occur. On that occasion we are told by Mr H. W. Wilson in his book, *The Downfall of Spain*, the outbreak of war ran up the insurance rates of American vessels as much as 50 per cent., for Spain, although relatively weak in naval power, had the advantage of numerous fine ports unblockaded and open, and (not being a signatory of the Declaration of Paris) was expected to commission privateers. Of the American merchant ships, many were taken into Government employ as auxiliary cruisers and transports, but of the remainder Mr Wilson (p. 439) says: “The few ships of the American lines running to Europe were transferred to a foreign flag—the Belgian.” Very soon, indeed, the panic subsided and insurance rates fell. But there remains the fact that the transfers were made, as sufficing to show that they can be made.

Will our merchant ships, then, be unable to continue running in the event of war? Will they be either laid up or transferred to neutrals? And, if so, will prices consequently greatly rise?

It was apparently on the assumption of an affirmative answer to all these questions that the suggestion of national indemnity was made. For if in war time the owners of British merchant ships can and do continue to run their vessels, it must be because they continue to get cargo from shippers, which again implies that the additional risk of shipping in British ships is so small that shippers being covered by insurance will be willing to incur it. It follows from this that if the risk is small to the cargo it will also be small to the ship; and thence follows that the risk will not materially raise either freights or prices. In which case a national indemnity or guarantee would neither be necessary nor justifiable.

All seems to resolve itself at last into a question of prices. If freights are not likely to be "doubled" or "trebled," nor prices likely to rise to the "famine" level often predicted, the gravity of the question is greatly lessened. If they are not likely to rise greatly or for more than a short time, the question becomes of small importance compared with those others that any war must raise. If they are not likely to rise at all, it becomes of no importance whatever. All this again resolves itself into the question whether we shall get our supplies practically undiminished. For if we do, prices can hardly rise. And price alone is the final point.

We must ask then whether war would stop our supplies of food or raw material; whether, either through captures by the enemy or by laying up

our own ships or causing their transfer or otherwise, it would so diminish the supplies as to cause a distressing rise in their prices? To all these questions a generally negative answer must be given though with important exceptions.

But the case will vary with the war. We must ask therefore *what* war?

For nearly a century we have not known war—war, that is, which would touch ourselves or involve risk to our own trade, homes, lives, liberty, and fortunes. When we did know such a war we waged it under the old conditions. These exposed to our naval power the whole of the sea-borne trade of an enemy; they made a British ship carrying British merchandise as safe as a neutral ship, and therefore as yet unexposed to the special risk now imposed upon it; and they in fact resulted during twenty years of deadly struggle, not in any loss of British shipping or trade, but in the doubling of both, while those of the enemy were lessened by two-thirds and for the time ruined. The experience of our next war waged under the new rule will, however, not be that of our last war waged under the old rule. We are consequently reduced mainly to conjecture in seeking to determine what the state of things would be under the new rule, and what its effect upon our merchants and shipowners.

“War” is often if not usually spoken of vaguely and in a way suggesting that it might be war with all the world at once; though past

experience has shown (as the relative circumstances and interests of all existing great powers make the future to promise) that Great Britain will never long continue at war without allies being attracted or forced to take sides with her against her enemy. Even when the impossible contingency of Great Britain against the world is dismissed, it is necessary, before any idea can be arrived at of the effect of war on British shipping, trade, or prices, to specify the war. For wars differ almost infinitely.

No notion as to how or how far a war would raise the questions here involved can therefore be reached unless we imagine a specific war.

That war must be imagined with a single important state. The probability of its effect in gaining either to us or to our enemy allies among other states must be for the moment disregarded—great as that probability may be—because it would too greatly complicate matters and also because, if we take the important states *seriatim* and consider the effect of a war with each, some idea of the effect of possible war alliances may thence be deduced.

The war must further be conceived as a maritime war alone, without for the moment taking count of the incidental and reflective effect upon it of a simultaneous land war with the enemy along our very important land frontiers—though this too would be important. With these reservations then, some forecast may be attempted.

The smaller states may be excluded. War with Venezuela, with Greece, or even with Turkey, would not raise the great questions involved.

Nor need we, for the moment, imagine any war except one which would raise these questions in their more serious form. Russia, Austria, Italy, may be excluded on this ground. On this as well as on other grounds we may further exclude Holland, Denmark, Norway, and Sweden; while we must necessarily exclude Portugal, the ancient ally whose whole territories, European and Colonial, we guarantee, and Belgium, whose neutrality we guarantee. We are left then with three principal powers to consider—The United States, France, and Germany.

War with the United States would be the most serious of all. Not alone their sea-board, their ports, their enterprise and ability, but the fact that they are not bound by the Declaration of Paris, would give them great power against our carrying and carried trade. They could commission privateers under the old form. They could capture British goods under the neutral flag, while Great Britain, though not bound as towards them, being still bound as towards the neutrals, could not venture to do so in face of these neutrals' claim to the promised immunity for their ships. Such a war would probably cause many of our merchant ships to be laid up. It would not, however, cause their transfer to neutral flags, since these would in this case give no protection—the United States

not being bound by any Declaration to acknowledge any such protection.

Not even this war indeed could stop the sea approaches to Great Britain, or starve us out for want of food. But it would assuredly increase risks, raise insurance if not freights, and add, for a time, to the cost of our supplies. This war, however, is held to be so impossible that the Admiralty, renouncing the secular tradition of the country, has given up all the naval stations on both sides of North America.

War with Spain would be waged under the same conditions as with the United States, for Spain, too, retains the right to commission privateers and to capture enemy property under the neutral flag. Spain, moreover, has a splendid sea-board, fronted both on the Atlantic and the Mediterranean, and provided with fine ports. But she has not the resources of the United States, nor the capacity to use them if she had them. Important and dangerous, therefore, as she would be if allied with and directed by an astute enemy against us, yet as a sole enemy she may be disregarded.

War with France would be the next most dangerous after war with the United States. Her grand sea-board, double fronted like that of Spain, her splendid ports on both, and her sound naval traditions make her, next to ourselves, the most formidable maritime power in Europe. France, however, being endowed at once with universal military service and universal suffrage, will hardly

fight again unless in defence of her own territory, or in case of some inconceivably tempting European cataclysm opening an easy way back to Alsace-Lorraine. The last power she would desire to fight is Great Britain. But a war with France alone would affect our supplies from the Black Sea, though probably not even those very greatly. It would raise the prices of wines, silks, fancy wares, and other articles of luxury, but not of food or raw materials to any considerable extent, if at all. It would not stop our food supplies. It would not close the sea avenues to these Islands. But it would lay up some of our merchant ships by the stoppage of the French trade, and by such interference as it caused with the Mediterranean and Black Sea trade.

War with Germany alone comes third in importance. Germany has on the open sea but a small sea-board ill provided with ports, while her Baltic sea-board is on the other side of the Sound or the Kiel Canal. Her powerful and growing navy, admirably equipped, is yet still deficient in the slow-growing naval and seaman-like tradition. Her future is said to be on the seas, and she has claimed the Trident and the Admiralty of the Atlantic. Moreover, the recent remarkable alterations in the preponderance of distribution of the British navy indicate at least that the North Sea seems to the Admiralty to claim a greater relative importance than it has hitherto had.



Since, therefore, it is necessary to imagine some specific war, we may take, purely by way of example, a war with Germany—a war with Germany alone, the rest of the world remaining neutral—a war which might last two or three years.

Were Holland, with her useful strategic position as against Great Britain, her sea-board and ports, her admirable naval tradition and her splendid population, absorbed and assimilated by the German Empire, Germany would be at least doubled in maritime strength, and would then be, taking all into consideration, as formidable on the seas as France. But Holland will hardly be absorbed easily, and she would be assimilated less easily.

In case of war with Germany alone, some of the mischiefs apprehended would probably not be severely felt. The action of the German privateer, in its modern form of “auxiliary,” evading the Declaration of Paris, would only be possible to a very limited extent and for a short time, since the German sea-board and German ports do not lend themselves, as do those of France, Spain, or the United States, to that form of warlike enterprise. Nor, for the same reason, would her naval cruisers be able to effect much in capture of British merchandise. The transfer of British shipping to neutral flags would thus probably not be forced, and therefore would not be general. The great—the real—mischief here would be that

we should be prevented by the Declaration of Paris from acting on German sea-borne resources; that *her* trade at least would be carried on under our noses by neutrals; that we should no longer have the power of acting through the sea on the land as in the French war; and that the struggle might therefore be prolonged into a stale-mate war, in which Germany would always be watching for an opportunity of land invasion, and Great Britain always for an opportunity of effectual naval action—without either finding it.

That in any case our supplies of food or raw material would be seriously interfered with by any war whatever, much less by war with Germany alone, is improbable. Nature protects us. The five great avenues of approach to the British Islands are wide indeed. From the Naze of Norway to the Orkneys is 300 miles. From the Orkneys to the northern end of Ireland is 350 miles. From the northern end of Ireland to Cape Clear at its southern end is 300 miles. From Cape Clear to the Scilly Islands is 150 miles, and from the Scilly Isles to Ushant is 100 miles—altogether over 1200 miles, which must all be closed before access can be debarred to the United Kingdom. Even, therefore, had we no navy to protect it, the access to our ports is such as all the navies of the world could not completely stop. But with a British fleet of preponderating strength on the sea, and with moderately capable strategists at the Admiralty, even so much as any serious interrup-

tion of sea-borne supplies is in the war supposed almost unthinkable. The navy would undoubtedly do its work—if not, it is to be hoped we should this time shoot a first-lord instead of an admiral—and part of that work is to know the whereabouts of any German cruisers likely to capture British ships, and, knowing it, to keep an eye upon them, and to be ready to hunt them down, to run them out of coal, to capture or destroy them. Even if this so failed as that some British merchantmen were captured, the German captor would still have the difficulty of taking them into his ports for adjudication, in the course of which they would be exposed to probable recapture by British cruisers. If, on the other hand, German captors instead of taking them in, sank them, or pretended to follow the piratical proceedings of Captain Semmes by substituting the adjudication of naval captains at sea for that of Prize Courts in port; or if, like Captain Semmes, they embezzled portable property found in the ships; if in any way, in short, they violated the law of nations, the British fleet would probably be able to find sharp and summary means of reminding them of their obligations.

The adequacy in numbers of the British navy as a protection to our shipping has during the last few years been vastly increased. As to the training or efficiency of men and officers, that is another matter; for there is danger that by 1911 the fleet may be partially, and later on wholly, officered by ill-trained lieutenants. Up to ten years ago the

navy had not kept pace in numbers with our merchant shipping, but in that respect it is now ample. It should be now fully equal to giving so complete a protection against Germany as would amount almost to immunity from capture.

The apprehension is, however, that, in spite of all, British freights would necessarily rise, that insurance would rise, that the prices in Great Britain of all sea-borne stuff would consequently rise, and that British merchantmen would largely be driven from the seas, and either laid up or transferred to neutrals, whose rates of insurance would be lower than those on British ships, for either German or British goods.

The reflection occurs that some of these apprehensions scarcely consist with each other. If British freights rose, that would probably induce, not fewer, but more, British vessels to keep the seas. On the other hand, if British insurance so rose as to drive cargoes from British to neutral ships, then British freights must probably fall.

But the final—the principal danger apprehended in war is that of a general rise in prices (especially of food) consequent on the assumed rise in freights and insurance; this rise in prices, the Commission of 1903 to 1905 on Food Supply report, “seems to us not only possible or probable, but, at any rate, for a time, practically certain.” Is it so certain?

If freights alone rose, or even if both freights and insurance rose, without resulting in a rise of prices, nobody would be injured; on the contrary,

shipowners and underwriters would increase in prosperity, while consumers of the nation at large would be left unaffected; it is therefore only to the apprehended rise in price of food and of raw material that attention need be given.

This apprehension, with some, is great. Authorities in the corn trade think that on declaration of war, prices might easily run up to 100s. or even 200s. per quarter; and, in any case, it is assumed almost universally that even if the rise were not so great as this, it would be great enough to cause much suffering to the poorer classes, and to render it imperative that some steps should be taken with "a view of keeping down prices" and maintaining "a steady level of prices in time of war."

The whole question is thus narrowed to that of the effect of war upon prices, which, again, may be narrowed to that of its effect upon prices of articles of first necessity, such as food and raw material. For while it is conceivable that a rise in these would cause great distress, it can hardly be contended that such distress would be caused by a rise in the price of articles of luxury. Ostrich feathers cannot claim the importance of corn, nor perfumery that of cotton.

First, with regard to freights. A rise in freights would, as already said, manifestly make it easier for British merchant ships to continue running. It is a fall in freights that would induce them to cease running, or to transfer to the neutral

flag. As to insurance, that must clearly be regarded as part of, and included in, the freights, so far as its effect upon prices is concerned. And, as already said, it all comes at last to the final question of prices.

That a rise in freights does not necessarily mean dearer food is shown by so late an experience as that of the South African War, when, although freights rose "all round" from 50 to 100 per cent. on "85 per cent. of all the shipping," the price of wheat fell from 27s. 4d. in October 1899, to 26s. 11d. for the whole year 1900.

But now as to prices generally and the effect upon them of war. With great respect to the corn trade authorities above quoted on this point of prices, it is by no means certain that on the outbreak of war prices would necessarily rise at all, or that even at the end of, say, five years of war, they would be any higher than before the war began.

Mr Tooke's *History of Prices* is universally recognised as a sound authority, and Mr Tooke is very clear and decided on the point. Writing in 1838, he says:—

"It will appear, on reference to former periods of our history, that there is no observable coincidence of a rise of prices during war, and a fall during peace. On the contrary, it so happens, that in the case of the agricultural produce of this country, there was for upwards of one hundred years previous to 1793, as low a range of prices during periods of war as during the intervals of

peace. This has been eminently the case with respect to wheat " (Vol. I., p. 97).

Mr Tooke only excepts from this general rule "articles subject to a tax, such as malt," to "increased charges of importation such as colonial and foreign produce," or to "extra demand for naval and military stores." But the general rule he states as quoted (supporting it by statistics of the wars from 1688 to 1783), and he especially insists on it in the case of provisions in general. "The prices of meat and other provisions," he says, "were as low in the periods of war as in those of peace, and in some instances lower"; and he adds, "the prices of wool would offer nearly the same result. Other articles might be enumerated as affording a similar conclusion." Mr Tooke adds:—

"After six years of war (1793-1798) involving a gradually increasing expenditure, defrayed by loans, much larger towards the later than at the earlier period, we see the prices of corn, after having been elevated by scarcity, obviously arising from the seasons, falling, upon the return of only moderate abundance, to the level whence they had risen " (pp. 182-188).

To all this may be added the further fact that in June 1817, two years after the battle of Waterloo, when, not alone the second, but the third and final phase of the war had been ended, "wheat in Mark Lane sold as high as 135s." (Tooke, Vol. II., p. 20).

From this we must conclude that it is impossible to affirm with certainty that war will always raise British food prices above the peace level.

But although the facts above cited suffice to show that war does not always necessarily raise the price of food, we must remember that the French war was waged under the old rules, and would therefore not be analogous to a future war waged under the new rules of the Declaration of Paris. During the French war we captured our enemy's goods under the neutral flag, thus often getting our stuff not cheap, but for nothing; and since the neutral flag gave no greater protection from the enemy to British goods than did the British flag, the British vessel was as safe as the neutral, and there was consequently no inducement to replace it by the neutral. Yet it is also to be remembered that the immunity of neutrals under the second article of the Declaration of Paris is presented, by those who would continue to adhere to that Declaration, as a security for the continuance in war of our supplies, if not, indeed, carried by British ships as of old, yet carried at least by neutral ships; and therefore as a security against a rise in prices. And whether by recurrence to the old rule the stuff, as of old, is again carried in British ships freed from the disadvantages of the Declaration, or whether it is obtained as freely by the employment of neutrals, does not affect the question of price.

Reverting then to prices; is it not conceivable



that in the case of a war with Germany lasting even so long as the first eight and a half years' phase of the great war with France, prices may fail to rise? Is it not even conceivable that they might fall? Conceivable it surely is; for prices, whether of food or of raw material, depend not alone upon war but upon seasons, harvests, and an infinity of other circumstances which render almost impossible a forecast of their movements during future years. In September 1792, five months before the war, wheat in England was 53s. 4d. per quarter; but in September 1793, when the war had already lasted seven months, it had fallen to 45s. (Tooke, Vol. II., p. 389), or to the extent of 15 per cent. Is it not conceivable that a similar fall might occur again?

The one thing about prices, if there be any one thing which may with some confidence be expected, is that, owing to the increased number and increased accessibility of the sources of supply, prices of food will in the future gradually but constantly tend to fluctuate less, and to rise and fall within narrower limits. Consequently the expectation of any such extreme difference as that involved in a rise from present prices to 200s. a quarter may with some confidence be dismissed as exaggerated.

The "Commission of 1903-1905 on the Supply of Food and Raw Material in War," after taking much evidence, reports as regards loss of sea-borne supplies through capture by the enemy:—

"It does not appear to us that any effort in

this direction which it will be possible for an enemy to make, would cause any material diminution in the over-seas supplies of these articles of primary consumption which are necessary for our population."

It says (p. 59):—

"The effect of the naval and shipping evidence is conclusive as to the point, that while there will be some interference with trade and some captures, not only is there no risk of a total cessation of our supplies, but no reasonable probability of serious interference with them; and that, even during a maritime war, there will be no material diminution in their volume, unless such a disaster takes place as . . . a reverse that would cost us the command of the sea."

This covers all supplies, whether of food or raw material; and with especial reference to food alone, the commission quotes the Board of Admiralty to the effect that "our supplies of wheat and flour would arrive in practically the same volume as they come at present"; and finally sums up (p. 35):—

"With a strong fleet, we find no reason to fear such an interruption of our supplies as would lead to the starvation of our people, nor do we see any evidence that there is likely to be any serious shortage."

With no material diminution in our supplies, with wheat and flour arriving in practically the same volume, and with no serious shortage, nor

even so much as a material diminution of supplies to fear, it might be supposed that the question of price would be solved; for it is hard to believe that with the same supplies prices would be higher.

Nevertheless, the commission, partly basing itself on prices in the Napoleonic war (from figures of Mr Tooke's carelessly quoted, and their true lesson therefore missed), was of opinion that "a rise of prices under apprehension of a maritime war, and still more on the outbreak of hostilities, seems to us not only possible or probable, but at any rate for a time practically certain" (p. 35). It looked (p. 36) to a rise in freights and of insurance, as a proximate cause of what it held to be the certain rise in prices. Nevertheless, it admitted that the opinions and calculations given in evidence (p. 37) indicate that "the addition to be made to the price of wheat in time of war under this head is relatively small as compared with that which might be caused by panic." Upon this apprehension of higher prices, the commission therefore considered proposals for the storage of grain, which it did not entertain, and for a system which it did entertain, of national indemnity against loss from capture by the enemy. This, it thought (p. 62), "would operate both as an additional security to the maintenance of our oversea trade, and as an important steadying influence upon prices." It added that "a guarded and well-considered scheme of national indemnity would

act as a powerful addition to our resources, because it would tend to keep down the cost of transport, and therefore would go far in the direction of preventing high prices in time of war, while at the same time it would be a stimulus to the enterprise of British shipowners." The commission, therefore, recommended a committee to "investigate the subject and frame a scheme."

We come then at last to this: that as regards supplies, no apprehension need be felt; that they will suffer no material diminution in quantity, and can therefore hardly suffer in material appreciation of their price; that the addition to price will be "relatively small"; and that, finally, it is a question not of price but only of panic, not of scarcity but only of a scare.

It may here be said that the "Treasury Committee of Experts" appointed to consider this indemnity proposal reported in March 1908 against it, and that nothing more has since been heard of it. Among the reasons which were presented—by myself among others—to the committee against the proposal, and which presumably influenced its decision, was the effect it would have in Prize Court proceedings.

At present, capture does not always result in loss. The owner or underwriter fights the case, and often, because of doubt or difficulties, obtains restitution from the Prize Court, whereof numberless instances may be seen in Robinson's *Admiralty Reports*. But with a system of national indemnity

no owner or underwriter need or would fight at all. All the cases would go by default; and for all the State must pay. The Prize Court itself would have a new inducement to, and a new justification for, condemnation, for under the proposed system there would be no question of ownership; the British State, being now the insurer of every British ship and cargo and bound to pay its full value, would in reality be made by the mere condemnation the owner of both; and ship and cargo together would, for that very reason, be condemned *sans phrase* by the court as the property of the belligerent state.

Indemnity after loss, then, would after all not prevent loss, but would rather encourage it. It would be a subsidy from the taxpayer to the shipowner and the merchant. That may be good for shipowners or merchants, but that is not the interest of the State. The interest of the State is not that supplies should be lost and paid for, but that they should be preserved and come; not that shipowners and merchants should get cash, but that the nation should get the stuff. National indemnity would not ensure this, but rather the contrary. What the State requires is not payment after loss but security against loss, not national indemnity but a national navy adequate in numbers, efficient in men, and set free once more to exercise all its powers.

The point, however, of most permanent and still subsisting interest that was raised was the

value in cash of the British ships and goods exposed to war risks, and the amount of risk that would attach to them.

Of this it seems possible to make some estimate.

The value of the goods involved would be, in each year, all that was landed in Great Britain during that year, added to the value of all that was exported—all, in fact, that is afloat during the year, and therefore exposed to capture at sea.

In 1905 there was landed from the sea (*Statistical Abstract*, pp. 71, 209, 293, 211, and 271):—

Imported merchandise . . . . .	£565,019,917	
Imported diamonds (from Cape of Good Hope alone) . . . . .	6,661,957	
Gold and silver bullion and specie . . . . .	51,559,909	
Fish . . . . .	10,672,387	
	<hr/>	£633,914,170
And there was exported:—		
Exported merchandise . . . . .	£407,596,527	
Gold and silver bullion and specie . . . . .	30,829,842	
	<hr/>	438,426,369
Total property afloat in the year, value . . . . .		<hr/>
		£1,072,340,539
Deduct one-third of the whole, estimated to be carried in foreign ships and therefore, under the Declaration of Paris, not liable to capture except in case of war with the United States or Spain . . . . .		357,446,846
		<hr/>
Property afloat in the year liable to capture, value . . . . .		<hr/>
		<u>£714,893,693</u>

This sum represents stuff which has to be covered by the indemnity once in the year, and

no more. For it runs the war risk once, and no more.

It is different when we come to the ships. Theirs is not the case of one war risk in the year, but of many. Each of them makes on an average some five round or ten single voyages a year. She must be covered, therefore, not once only in the year, but for as many voyages as she makes, or ten times.

The navigation returns show that there were on the register of the United Kingdom on 3rd December 1905, 20,581 British ships of an aggregate net register tonnage of 10,735,582:—

	Net Registered Tons.
Whereof there were actually employed during the year . . . . .	10,597,761
In addition to which there were vessels belonging to British colonies and possessions of 1,596,822 tons, whereof were employed, say . . . . .	1,580,000
Besides British fishing vessels . . . . .	176,374
Total net register tonnage . . . . .	<u>12,354,135</u>

The difficulty of arriving at an average value of ships of various sizes and ages, and especially the difficulty of arriving at it on the purely artificial and conventional basis of net register tonnage, is great. Colonel Hozier, speaking in 1903, valued 7,400,000 net register tons of British shipping, "from fast liners at £40 per ton down to depreciated tramps," at £96,392,800, or £12, 17s. per net ton all round. Competent experts, however, who have long and repeatedly

considered the question, point out that many modern vessels like the *Oceanic* (and they, be it remarked, of the largest tonnage) cost £100 per net ton to build, and that a new tramp steamboat, of the cheapest type in the market and of 2763 net tonnage, was recently sold to an American firm for £45,500, or £16, 10s. per net ton. They conclude, therefore, that £12, 17s. is far too low, and that £20 per net ton all round would not be an extreme price.

Consequently we may take a rough mean between the two of about £17 per net register ton all round, which will probably be a rough approximation to the present value of the ships.

Total value of above vessels 12,354,135 tons, at £17 per net register ton .	£209,920,295
But, since each makes an average of five round voyages in the year, or ten voyages out or in, each must be covered ten times in the year, and the whole value to be covered is .	£2,099,202,950
Add the value of the goods as shown above . . . . .	714,893,693
Total value of ships and goods liable to war risks in one year, say .	<u>£2,814,096,643</u>

Here, then, we have a total value of goods and ships of £2,814,000,000.

What now is the true measure of the war risk to this vast property without reckoning underwriter's profits—the naked war risk?

Captain Inglefield, of the Naval Intelligence Department, puts it at 2½ per cent.; Mr Douglas



Owen, secretary of the Alliance Insurance Company, at from 5 to 20 per cent., but would "call it 10 per cent." Mr Leverton Harris, ship-owner and underwriter, "will assume 5 per cent. per voyage on a tramp steamer crossing the Atlantic," though both the latter may be read as not excluding but including underwriter's profits.

Here again, all depends on the particular war. In some wars the naked war risk would be inappreciable. In other wars it would be still inappreciable for certain voyages, while for different voyages it might rise to the 10 per cent. suggested, or higher.

If I may presume myself to estimate the naked war risk—the actual risk of loss by capture—I should say :—

That in the case of war with Germany, for the reasons already given, and taking the present relative naval strength, sea-board, ports, and all into consideration, the true measure of the war risk would be even less than the lowest estimate of  $2\frac{1}{2}$  per cent. suggested by the experts; and that it would not, when finally ascertained, exceed an all-round rate, on all the goods and ships, of more than 1 per cent. per voyage, even if it reached that.

In the case of war with France, it might reach 2 per cent. per voyage; and in the case of war with the United States, as much as 3 per cent. In the case of war with any other power than these three, it would probably not attain 1 per cent.

As we have seen, the project of indemnity was

in the event happily abandoned, and the shipping trade was left in the position of every other trade in war—to fend for itself. That it can do this without vast loss and often even with great profit, has been the experience of previous wars.

It is not easy in time of peace to realise or to forecast the final effect of the cross-currents, conflicting influences, and complex results that will arise in war. Some of them seem likely to be as follows :—

Taking (as for simplicity is done throughout) the figures for 1902 as quoted by the “Royal Commission on the Supply of Food and Raw Material in Time of War,” it appears that in that year there were entered and cleared with cargo at ports in the United Kingdom vessels, British and foreign, trading to certain (the principal) foreign countries, of a total tonnage in round numbers of 45,000,000 tons, whereof 32,000,000 were British. This total, it will of course be remembered, counts the same tonnage not only coming but also going, and counts it both coming and going perhaps many times in the year. But it all represents cargo carried to or from British ports, whether in or out, and whether by different vessels or the same. It is thus the measure, not indeed of the number of ships nor of their tonnage, but of the whole sea-borne carriage involved. Of this whole, then, British vessels trading to Germany represented nearly 4,000,000 tons, and German vessels entering and clearing in Great Britain 3,200,000 tons.

Now, in war time, British ships could no longer trade with Germany, nor German ships with Great Britain; wherefore the first effect of the war would be to diminish the total 45,000,000 tons of British entries and clearances by the sum of these two—viz., 7,000,000, and to reduce it to 38,000,000. What will become of the 3,000,000 of German tonnage stopped, we need not at present inquire; but with regard to the 4,000,000 of British tonnage set free from the trade with Germany, it will be remarked that it amounts to 12 per cent. of the whole British tonnage entered and cleared with cargo in the country. Here, then, is an addition of 12 per cent. to British tonnage.

Taking that alone, would its effect be to raise British freights, which is confidently predicted as one of the certain results of a war, or would it not rather be *pro tanto* to lower them?

It is further to be remembered that our food imports of all sorts (excluding wines, spirits, and tobacco) reached in 1902 only a value of £190,000,000, and our raw material imports of all sorts only £147,000,000; or, taking both food and raw material together, £337,000,000 out of a total import of £528,000,000. If, then, the tonnage broadly corresponds with the value, we should require no more than three-fifths of the tonnage entered and cleared to carry the whole undiminished supply of food and raw material. In other words, if we dispensed with luxuries, we could continue our full sea-borne supply of food and raw material

with 27,000,000 out of the total of 45,000,000 tons entered and cleared—a difference of 18,000,000 fewer tons required to continue uninterrupted the carriage of our absolutely indispensable supplies of first necessity. For this diminished carriage we should have more ships available. We should have 4,000,000 more of British tonnage to do 18,000,000 tons less work. We should in all have a redundancy of 22,000,000 tons. Would this probably raise freights? Would it not rather probably lower them?

But that is not all the story. There is the German shipping. In 1902 (*Statistical Abstract for Foreign Countries*, p. 39) there were entered and cleared in Germany, with cargoes, German ships of a total of 13,000,000 tons. What will become of *them*? Is it not highly probable that, with the British navy predominant, most of these ships would be unable to continue running? If so, at least a portion, probably a large portion of their trade, such as that to North and South America, would fall to the British shipowner. This would seem likely *pro tanto* to raise British freights, and, if the new portion were large, to raise them considerably. And here would come work for our redundant 22,000,000 of tonnage. There will clearly be cross-currents and conflicting influences in freights.

Germany, however, although deprived of the use of her own ships, need not intermit her trade, as she would have been forced largely or wholly

to do under the old rule which made German property liable to capture even under a neutral flag. Under the rule of the Declaration of Paris it will matter nothing whether her navy is or is not able to protect her 13,000,000 tons against British capture. She can carry every ton of it under the neutral flag, and run it under that flag into or out of any German port not effectually blockaded, or into any adjacent neutral port. Holland, Belgium, Norway, perhaps even Denmark, possibly even the United States, could furnish tonnage for these uses; and if these did not suffice, a considerable portion of Germany's own tonnage—already laid up out of work and profitless—could be, and probably would be, transferred to one of the flags named. Were this to be the case, any temporary rise in British freights resulting from the withdrawal of German tonnage would be brought down again by the reappearance of that same tonnage under the neutral flag.

Finally, there is the great demand for tonnage for the service of the navy that war would create. Whatever resulted from the various conflicting influences hitherto mentioned, this influence would certainly tend to raise freights, though to what extent would partly depend upon those conflicting influences themselves, and upon many others not to be foreseen, much less estimated.

#### PRICES IN WAR TIME.

As to war prices, it is informing to recur to the

effect on prices of the war with France which began in February 1793, and lasted in its first phase eight and a half years, till October 1801, and in its second phase eleven years, from May 1803 until 1814.

Taking the first phase of eight and a half years, we find that "never before was the shipping of this country employed at higher freights" (Tooke's *History of Prices*, Vol. I., p. 104). There was an "increased rate of freight and insurance which applied to the whole period of the war, but which, in the last six years of it, amounted to an enormous charge on all importations from the continent of Europe" (Vol. I., p. 115). But we nevertheless find that in the first two years of the war, "there was a very general fall of prices from the close of 1792 to the commencement of 1794. On looking over the table of prices, it will be seen that there were very few commodities which were not lower at the close of 1792, and at different periods in 1793 and 1794, than they had been at the commencement of 1792 . . . the lowest point of depression of the prices of such articles as had risen most between 1790 and 1792 seems to have been reached in 1794" (pp. 178, 179).

Thus in the first two years of the war, although freights and insurance rose, prices generally did not rise, but fell. Prices were lower and freights were higher—an ideal combination. With the beginning, however, of the third year of war (1795), prices began to rise rapidly, especially the price of corn, which reached 108s. in August of that year, causing

great distress to all, but especially to the poorer classes. During a whole year the high price continued. But it did not last. At the end of 1796 the average price of wheat fell to 57s. 3d. - In 1797 it fell still further to 49s. and 50s., and in 1798 to as low as 48s. Moreover, if the price of corn did not rise at the outbreak of war, neither did the prices of other commodities, as to which "there had been a general fall of prices at the commencement of the war; and they continued at a comparatively low range through the greater part of 1794," *i.e.*, during the first two years of the war.

In 1795 and 1796, indeed, imported commodities such as hemp, tallow, timber, sugar, and cotton rose and continued to rise until the close of 1798, by which time their price had generally doubled, and was "much higher than during any subsequent period of the war" (pp. 190 and 192).

Then, after five and a half years of war, at the close of 1798 the price of food again advanced, until in March 1801 wheat was 156s. a quarter (p. 224). Imported commodities such as wool and timber also rose; but, on the other hand, such colonial produce as sugar, indigo, and tobacco fell to less than half price between 1798 and 1801.

Now, however, ensued another change in the price of wheat. In January 1801 Great Britain had already been at war eight years; she continued to be so for another nine months, when it might be presumed that the stress of war upon prices, if any

stress there was, would be greater than ever. But wheat did not rise. On the contrary, it fell from 156s. in March 1801, to 129s. in June 1801, and again to 75s. a quarter at the end of 1801 (p. 237). It should be remembered that so early as this year, 1801, we already depended on foreign wheat to the extent of 1,500,000 quarters, or about one-fifth of our whole consumption (p. 237).

A further notable fact, pregnant with instruction and with suggestion, is that during the old French war, under the old rule, while prices went down in England they went up in France, especially for colonial produce. At the close of the war in 1813 (as we learn from Larpent's *Journal*) the French consumer had to pay six shillings a pound for his sugar while the British consumer got it for sixpence.

If I have dealt, as I fear is the case, somewhat tediously with these figures, it is partly because Mr Tooke's valuable work has been carelessly quoted to show that the outbreak of war does necessarily increase prices; whereas, the extracts given show that Mr Tooke affirmed and proved the contrary. In this instance, at least, neither the outbreak nor even the eight years continuance of war had the effect upon prices which is at present assumed to be inevitable.

There is the further fact that in 1817, two years after the battle of Waterloo, when, not alone the second, but the third and final phase of the war had been ended, "the highest price was on the



14th June, when wheat in Mark Lane sold as high as 135s." (Tooke, Vol. II., p. 20).

It is impossible to continue in a belief that war necessarily raises the price of food when we find it above shown that, during war, wheat was at certain moments as low as 48s., and that two years after the conclusion of peace it was as high as 135s.

It is, however, essential to remember that this condition of things was when war was waged under the law of nations as accepted and enforced before the Declaration of Paris, which profoundly altered all.

The Declaration of Paris of 20th March 1856 declared as between those who adhered to it two novel and noticeable things. Art. I., "Privateering is and remains abolished." Art. II., "The neutral flag covers the enemy's merchandise with the exception of contraband of war." It has long been apprehended that the latter article would be disastrous to British shipping by driving it, at the outbreak of war, out of employment or into foreign neutral ownership.

This would be indeed only an incidental disadvantage imposed on Great Britain by the Declaration of Paris. The principal and far greater mischief of that declaration is that it debars us, a maritime power, from effective action against an enemy's sea-borne supplies, and thereby deprives us in the future of that ability to distress our foes by crippling their material resources which

the past has shown to be our most potent arm of offence.

The doctrine, "the neutral flag covers the cargo" (or "free ship free goods," without the usual accompanying clause, "enemy ship enemy goods"), originally propounded in 1752, was repudiated by Great Britain, was resisted through the Armed Neutralities of 1780 and 1800, and was only finally submitted to in 1856. Many of our greatest statesmen, sailors, and soldiers hold that its acceptance was fatal to the offensive, and therefore to the defensive, power of the British navy; and that by thus abandoning the power to make war on the enemy's trade, and so to put material stress upon him, we divested ourselves of the best weapon of a maritime nation and rendered our fleet almost valueless for any other purpose than for preventing an invasion.

Mr William Pitt, Mr Fox, and Lord Nelson in 1801, Lord Derby in 1856, Mr Disraeli in 1862, Mr J. Stuart Mill in 1867, Lord Salisbury in 1871, and Lord Roberts in April 1894, have all expressed and enforced this conviction; and even so late as December 1897 Lord Salisbury wrote: "The Declaration of Paris was a rash and unwise proceeding." If the conviction of these great men be well founded, the peril to the nation in general arising from the second article of the Declaration is so tremendous as to make whatever mischief may ensue to the shipowner or the merchant in particular comparatively trivial and unimportant.

It is to be remarked that the first article of the Declaration of Paris—"Privateering is and remains abolished"—has practically been destroyed, or at least evaded, by an invention first adopted by Germany and by Russia, and since by Great Britain, in the scheme for subsidising and arming merchant vessels under the name of auxiliaries or volunteers. This is most particularly noteworthy, because it was the first or privateer abolition article of the Declaration which was put forward to, and expressly accepted by, Lord Clarendon on behalf of Great Britain, as the compensation for her abandonment of her ancient rights by acceptance of the second article withdrawing from capture enemy's goods under the neutral flag. The concession made by Great Britain in the second article remains; the pretended compensation made by the first article has disappeared. "Free ship free goods" is established. Privateering is not and does not remain abolished.

That the Declaration of Paris was not duly authorised; that it is no part of the Treaty of Paris; and that, even if it were, it might be denounced and revoked, as has been the case with every modern European treaty from that of Utrecht of 1713 to the Treaty of Paris itself (denounced and revoked in its Black Sea clauses) and the Treaty of Berlin of 1878 (denounced and revoked in its Batoum clause)—all this has been established. Nevertheless, the Declaration is undoubtedly binding on Great Britain unless and until it is denounced. If

allowed to subsist through peace, it could not be repudiated at the outbreak of war. The honour of the country would forbid that; consideration for neutrals, among whom Great Britain would probably then be looking for allies, would preclude it.

Those who would enter more closely into the details of the proposed "national indemnity" may refer to the report of the Treasury Committee and the evidence given before it, to be found in Parliamentary Papers Cd. 4161 and Cd. 4162 of 1908. In the appendix to the evidence will be found a paper prepared for the committee by myself, from which the figures above arrayed are taken.

Having so far endeavoured summarily to set forth the general principles and considerations affecting sea power, to show how this is affected by sea law, to describe what that law long was, what it is by most nations—always excepting the United States and Spain—accepted to be since the Declaration of Paris of 1856, and to give some account of its history up to the present day, it now remains to describe the most recent attempts at further alterations in the law of the sea, begun in 1907, continued until 1909, and now proposed to be embodied in the Hague Convention, the Declaration of London of 1909, and the Naval Prize Bill of 1910.

What precedes is necessary to a full understand-

ing of that which follows. What precedes is a chapter on the law of nations and the interests of Great Britain in war. What follows is a chapter of present politics—not at all of partisan, but of national politics.

## IV

### THE HAGUE CONFERENCE OF 1907 AND ITS CONVENTIONS

THE Prize Court Convention of 1907 has a strange and, for those who look ever so little below the surface, an enlightening history.

It began with the Peace Conference of 1907. And that began with the Emperor of Russia. This amiable autocrat desired "to give a new development to the humanitarian principles which served for basis to the work of the great International Meeting of 1899." He therefore on 3rd April 1906 issued a circular inviting to a second conference the representatives of forty-seven states, whereof it subsequently transpired that Panama had declined the invitation, that Honduras sent no delegate, and that Ethiopia for some unknown reason had dropped out of the proceedings.

The British Government received these proposals with compliance. Sir Edward Grey did indeed, on 25th July 1906, declare that they "desire to see the question of the reduction of armaments included in the deliberations of the conference"; but they frankly avowed that they knew well that the Russian Government desire to guard themselves

against the "inference that they are specifically committed to such a discussion." This was practically to accept beforehand the exclusion from the conference debates of the very question which some excellent persons in Great Britain believed to be its main and most important business; and in fact all the conference did with regard to that was to declare it "eminently desirable that the Governments should resume serious examination of this question," where-with the grave closed over the desire of H.M. Government.

The British instructions to Sir Edward Fry, dated 12th June 1907, went far beyond the reduction of armaments. They were in effect instructions to abandon at the conference all the law, all the practice, and all the traditions of preceding British Governments in respect to war at sea. Thus, the British delegates were to abandon the British Prize Courts and the Judicial Committee of Privy Council, whose decisions have gone so far to define the law of nations :—

"H.M. Government are *anxious* to secure the adaptation of the machinery of the existing tribunal which was created by the Convention [of 1899] to the purposes of an International Tribunal of Appeal from the decision of belligerent prize courts affecting neutrals."

H.M. Government went further. They "recognise to the full the desirability of freeing neutral commerce to the utmost extent possible from

interference by belligerent powers, and they are ready and willing for their part, in lieu of endeavouring to frame new and more satisfactory rules for the prevention of contraband trade in the future, *to abandon the principle of contraband of war altogether*, thus allowing the over-sea trade in neutral vessels between belligerents on the one hand and neutrals on the other, to continue during war without any restriction, subject only to its exclusion by blockade from an enemy's port." Furthermore, they "would be glad to see the right of search limited in every practicable way, *e.g.* by the adoption of a system of consular certificates declaring the absence of contraband from the cargo, and by the exemption of passenger and mail steamers upon defined routes, etc."

Besides this :—

"If an arrangement can be made for the abolition of contraband, H.M. Government would be willing for their part, that it should also extend to what are technically known as the 'analogues of contraband,' viz., the carriage of belligerent despatches and of persons in the naval and military services of a belligerent, in cases where the rendering of such services by the neutral was not of such a kind or so great in extent as to identify the neutral vessel with the belligerent forces, and bring her within the definition of warship, which H.M. Government are anxious to secure.

"The object which H.M. Government have in view, as you are aware, is to limit, so far as may



be, the restrictions that war entails upon legitimate neutral trade.

“The question of the carriage of enemy despatches cannot be entirely separated from that of mails in general, and they would welcome and wish you to do all you can to secure an arrangement under which mail packets or bags in transit on board a neutral ship, in accordance with the provisions of the Postal Conventions, should be inviolable, even though such mails should contain despatches for a belligerent, and the neutral vessel carrying such mails should not be subjected to any interference for so doing except in the case of her endeavouring to violate a blockade.”

On the question of exempting private property from capture at sea, indeed, H.M. Government declared that they could not authorise their delegates to agree to it, unless “the nations generally were willing to diminish their armaments, naval and military”; but with that exception—an important one no doubt—Sir Edward Fry and his fellow-delegates were instructed to surrender belligerent rights all along the line.

These instructions were manifestly prompted by the belief that Great Britain will be more often neutral than belligerent, and that her interests in naval war will consequently be rather those of a neutral than those of a belligerent; whereas the contrary is the truth. For whatever gain Great Britain might make during a long period of neutrality, would be as nothing compared with

the loss she would risk by giving up her fighting powers during even a short period of belligerency.

Yet with such instructions as these, Great Britain sent her delegates to take part in the Second Peace Conference which opened at the Hague on 15th June 1907, when there assembled the representatives of 45 states represented by 156 delegates.

The list of the states who took part in these proceedings and sent plenipotentiaries and other delegates to the conference, as recorded in the *procès verbal* of the opening sitting, is not without significance. It is as follows :—

	No. of Delegates.		No. of Delegates
1. Germany . . . . .	7	25. Luxembourg . . . . .	1
2. United States of America . . . . .	8	26. United States of Mexico . . . . .	3
3. Argentine Republic . . . . .	3	27. Montenegro . . . . .	3
4. Austria Hungary . . . . .	7	28. Nicaragua . . . . .	1
5. Belgium . . . . .	2	29. Norway . . . . .	3
6. Bolivia . . . . .	2	30. Panama . . . . .	1
7. United States of Brazil . . . . .	1	31. Paraguay . . . . .	1
8. Bulgaria . . . . .	3	32. Holland . . . . .	8
9. Chili . . . . .	3	33. Peru . . . . .	2
10. China . . . . .	6	34. Persia . . . . .	2
11. Colombia . . . . .	3	35. Portugal . . . . .	4
12. Cuba . . . . .	3	36. Roumania . . . . .	3
13. Denmark . . . . .	3	37. Russia . . . . .	8
14. Dominican Republic . . . . .	2	38. Salvador . . . . .	2
15. Ecuador . . . . .	2	39. Servia . . . . .	3
16. Spain . . . . .	5	40. Siam . . . . .	3
17. France . . . . .	8	41. Sweden . . . . .	4
18. Great Britain . . . . .	6	42. Switzerland . . . . .	3
19. Greece . . . . .	3	43. Turkey . . . . .	5
20. Guatemala . . . . .	1	44. Uruguay . . . . .	5
21. Honduras . . . . .	0	45. Venezuela . . . . .	1
22. Hayti . . . . .	2		
23. Italy . . . . .	5		
24. Japan . . . . .	5		
			156

So mixed an assembly of states so unequal in size and importance, yet all equal in voting power, has rarely been seen. Presumably there was some esoteric principle of selection known to the chancellories which dictated the selection of these 45; but it is not apparent to ordinary mortals why Bolivia, Colombia, Cuba, Domingo, Ecuador, Guatemala, Hayti, Luxembourg, Nicaragua, and Panama, Salvador, Servia, and Switzerland should have been included, while Tibet, Muscat, Egypt, Ethiopia, Morocco, Liberia, and Monaco were omitted, besides the kingdoms of Wurtembourg, Saxony, and Bavaria, and the Duchies of Brunswick, Hesse, and Mecklenbourg. The reply presumably would be that it was all settled by the Emperor of Russia, who issued the invitations.

Nevertheless there is a certain element of humour in a list of states convened to settle the affairs of the sea which includes countries having, like Luxembourg and Switzerland, no sea-board of their own, and therefore no naval affairs or naval knowledge of their own.

The 156 very naturally proceeded to elect as their president M. Nélidow, the Russian delegate, representing the inviting autocrat of all the Russias, who, as M. Nélidow at once reminded the delegates, was the original august inventor and initiator of those peace conferences by which it was intended to advance humanity. He added that, since the first Peace Conference of 1899 had established the principle of arbitration, and by

its "humanitarian measures" had "spread throughout the civilised world a sentiment of international amenity and created a pacific current," so those measures should be completed by the labours of that second conference of 1907. Strangely enough he did not adduce the war between Russia and Japan of 1904-1905, though the conference could hardly so soon have forgotten that recent example of international amenity and pacific currents.

Yet he did pay some tribute to facts; for he reminded the delegates that "there is a whole series of cases in which honour, dignity, and essential interests are concerned, whether for individuals or for nations, and in which neither the one nor the other will ever, whatever may be the consequences, recognise any other authority than that of their own judgment and their personal feeling."

Having thus avowed the incapacity of conferences to deal with any nation that will not be dealt with, he took one of those flights into the hazy empyrean with which every student of peace conferences is familiar:—"But let not that discourage us from dreaming of the ideal of universal peace and a fraternity of peoples which are, after all, but the natural and superior aspirations of the human soul. Is not the essential condition of all progress the pursuit of an ideal to which we always tend without ever being able to reach it? A tangible end once attained arrests

the impulse, whereas the progress of every enterprise requires the continuous stimulant of an aspiration towards something more elevated. Excelsior is the motto of progress. Let us then bravely set to work, having, to light our path, the luminous star of peace and universal justice, which we shall never reach, but which will always guide us for the good of humanity.”<sup>1</sup> “

This engaging description of the business the conference was to do being thus gravely given and as gravely listened to, and it being in truth thoroughly understood that the only real business was to set up a new law of nations and a new International Prize Court for clipping maritime rights and their exercise during war, M. Nélidow proposed that the secretariat of the conference should be composed (as composed it forthwith was) of six Dutchmen, five Russians, three Frenchmen, two Belgians, one Roumanian, one Spaniard, one American, and one Briton—a choice which indicated the relative importance attached on the one hand to such naval powers as Holland and Russia, represented on the secretariat by eleven out of the twenty, and to such naval powers as the United States of America and Great Britain, represented by only two out of the twenty.

The note of subordination of the maritime powers was thus struck at once. It was thus

<sup>1</sup> All the extracts are translated from the French of the *procès verbaux* of the Hague Conference, none of which have been laid before Parliament in English.

made evident at once that whatever might depend for its expression on secretariat power would be expressed rather in accordance with Dutch and Russian than American and British views.

The second sitting of the conference disclosed the fact that the basis of the work intended was the programme proposed by the Russian Government under four heads; 1. Arbitration; 2. Amelioration in the laws and customs of land war; 3. Naval war, bombardment of ports, floating mines, belligerents in neutral ports, etc.; 4. Transformation of merchant ships into men-of-war, private property on the high seas, contraband of war, blockade, destruction of neutral prizes, etc.

Then there occurred this:—Baron Marschall von Bieberstein proposed on behalf of the German Government the establishment “of an international jurisdiction to discuss the legality of captures in maritime war. This would be a High Court of Justice sitting as a Court of Appeal, while the national tribunals would deliberate in first instance.” Here was the intended purpose disclosed. And Sir Edward Fry—duly instructed by the Foreign Office—“declares that it is with great satisfaction that he has heard the proposal of his German colleague. The British delegation has received instructions in a similar sense, and it is with pleasure that it will collaborate with the other delegations to enlarge the principle of arbitration.”

The proposal, let it be here observed, was made by Germany. That is intelligible enough. What is unintelligible is that it was accepted by Great Britain, accepted with pleasure and with promise of collaboration. For what was here accepted was, in principle, the whole thing; the withdrawal from British Prize Courts and the British Judicial Committee of the Privy Council of their power of final decision; their reduction to courts having only power to "deliberate in first instance"; and their supersession by a new "High Court of Justice sitting as a Court of Appeal." That being accepted, all was accepted. That being surrendered, all was surrendered. The position was gone, and it only remained to settle where and how those who had surrendered it should march out and pile their arms—which naturally and duly followed.

It will have been noticed that, of the four heads of the Russian programme which the Conference undertook to work out, only the two last were concerned with maritime war.\* It is interesting therefore to note how the members of the *bureaux* of each of the four commissions were dealt out. Of the first commission dealing with arbitration, France received the post of president; Germany, Italy, and Mexico the three posts of vice-president; and Austria, Brazil, and Great Britain the three posts of honorary president. In the second commission, dealing with war on land, M. Beernaert (whose name is not to be found in the *procès*

*verbal* recording, at the opening sitting, the delegates) was made president; Denmark, Roumania, and Switzerland each received a vice-president; while Germany, the United States, and Portugal each furnished an honorary president. In the third and fourth commissions, dealing with naval warfare, Italy and Russia furnished the presidents; Sweden, the Argentine Republic, France, Great Britain, Austria, and Norway, one each of the vice-presidents; and the United States, China, Turkey, Spain, and Japan, one each of the honorary presidents. These facts suffice to show the amount of weight given to Great Britain in the *bureaux* of the two commissions dealing with matters important indeed to all, but to her vital. On the *bureau* of one of the two commissions she was not represented at all; in the *bureau* of the other she had one vice-president.

The end of it all was that the first commission, after much and very natural doubt whether it was not going outside the programme, elaborated the detailed scheme for an "International Prize Court" which figures in the Naval Prize Bill Schedule, and which, having been, to use again the language of the preamble, "drawn up," was enshrined with much else in that "final act" of the conference, dated 18th October 1907, which was alone (*qui seul aura l'honneur*) to receive the signatures of all the delegates. Here it may be proper to remark that the report of the first commission in presenting the scheme contains some frank and enlightening



avowals regarding its own work. Thus we are told that :—

“The intervention of a jurisdiction, even that of the captor, constitutes, when an enemy’s ship is concerned, a superiority of maritime war over continental [land] war, in which the acts of the military authority leave no place for judicial debate and produce their effect by themselves.”\*

It would be hard to express more mildly the plain and pregnant fact that the acts of military authority directed against an enemy’s property on land are subject to no other law than the will and the discretion of the military commander and cannot be called in question in any court, while the same acts directed against similar property at sea *are* subject to law and *can* be called in question before a Prize Court. Nor would it be easy more frankly to avow that the law of nations is and always has been less indulgent to and less tolerant of inhumanity at sea than on land, and amply able to punish on the sea misdeeds or misconduct which on land cannot so much as be called in question.

The report, moreover, frankly avows that the new International Prize Court proposed to be set up—

“is called upon to *make the law* [these italics are those of the report itself] and to take into account other principles than those to which are submitted the National Prize Court Jurisdiction,

whose decision is attacked before the International Court."

A frank declaration indeed! The new court is to *make the law*; and that law is to be a law based to some undefined extent upon other principles than those by which Prize Courts have hitherto held themselves bound! The new court, in fact, is to go as it pleases. To put this beyond all doubt, the reporter (M. Louis Renault) adds:—

"How is nationality, property, or domicile to be proved? Is it only by the ship's papers or equally by other document produced? *We intend to leave to the court full powers of appreciation.*"

And again:—

"Every liberty is left to the court as to the appreciation of the various elements furnished to it to determine its conclusion. *There is not here a legal system of proofs.*"

Here, then, we have fully avowed the manner and methods whereby the new court is expected and intended to act. "No legal system of proofs." "Full powers of appreciation" of ship's papers, other papers, any papers or no papers at all. "Other principles" than any hitherto known. Any proof, any principles, and the law made as you go along, in accordance with the principles of justice and equity entertained in San Domingo or wherever the judge with a casting vote may come from! Was ever such a tribunal, acting in

such a way, seriously propounded by sane men to sane men?

Here again let it be recalled that it was Germany that proposed the institution of this court and Great Britain that accepted it.

How far Germany herself would observe in war any law whatever that did not suit her, or pay any respect to the decisions of any court whatever not enforced by a power superior to her own, was sufficiently illustrated and avowed by what took place at the eighth sitting on the 9th October 1907, when the conference received the report and the convention (prepared by the sub-commission of the third commission and reported by the Greek delegate, M. George Streit) on submarine contact mines—one of the various subjects with which the conference undertook to meddle besides the establishment of an International Prize Court. This convention would allow a belligerent to sow the whole seas with these deadly secret perils absolutely at his own will and wherever he pleased without restriction, subject only to the derisory condition that they shall not be placed “on the coasts or before the ports of the adversary with the sole purpose (*dans le seul but*) of intercepting commercial navigation.” If the purpose be partly to intercept commercial navigation and partly some other purpose — any purpose whatever — then these deadly traps may be laid at pleasure and without restriction, and any vessel destroyed by them is to be sufficiently consoled by being told that it is

not proved—which indeed never could be proved—that the interception of her navigation, though one indeed of the purposes with which the mine was laid, was not the *sole* purpose. All which is manifest mockery.

The sheep-like way in which the British delegates dealt with this convention does little honour to their country. After the *ensemble du projet* had been unanimously adopted, Sir Ernest Satow said :—

“*Having voted for the convention as to mines which the conference has just accepted, the British delegation deems it necessary to declare that it cannot consider this arrangement as giving a definitive solution to the question, but only as marking a stage in international legislation on the matter.*”

This belated bleating over a convention for which he had voted places Sir Ernest Satow, speaking for Great Britain, in contrast with Baron Marschall von Bieberstein, speaking for Germany. This is what the Baron said :—

“A belligerent who lays down mines assumes a very heavy responsibility towards neutrals and pacific navigation. On this point we are all agreed. Nobody will have recourse to this method without absolutely urgent military reasons. But *military acts are not ruled exclusively by the stipulations of international law.* There are other factors : conscience, good sense, and the sentiment of duties imposed by the principles of humanity

will be the surest guides for the conduct of seamen, and will constitute the most efficacious guarantee against abuse. The officers of the German navy—I say it with a high voice—will always fulfil in the strictest manner the duties which flow from the unwritten law of humanity and civilisation.

“I need not tell you that I entirely recognise the importance of the codification of the rules to be followed in war. But we must beware of decreeing rules whereof the strict observance might be rendered impossible by the force of things. It is of primary importance that the international law we seek to create shall only contain clauses whereof the execution is militarily possible, even in exceptional circumstances. Otherwise, respect for the law would be diminished, and its authority shaken. . . . As to the sentiments of humanity and civilisation, I cannot admit that any Government or country is in these superior to that which I have the honour to represent.”

Nothing could be more frank than this avowal that “military reasons” are, so far as Germany is concerned, to override all other reasons whatever, that only when these reasons allow will any law whatever be observed, and that if any law is adopted interfering with military reasons or prescribing what is “militarily impossible,” then that law will get no respect from Germany, but only a shaking of its authority. The pill was, as usual, gilded with the stock phrase of “humanity and civilisation,” but there it was and is. What-

ever else is left doubtful, this is made clear: that the International Prize Court may enforce its decrees and apply its law, such as that may be, to other cases and other countries as it will and can; but that, when Germany is in question, no court and no law will avail against what a German general or admiral, or even a German lieutenant or midshipman, may deem to be adequate "military reasons."

Nothing more can be needed to show the danger of trusting to conventions setting up a law of nations held in such an opinion by the very power which proposed the creation of the court to enforce it.

To return, however, to the convention establishing the International Prize Court. Out of 44 states, 6 (Dominica, Japan, Russia, Siam, Turkey, and Venezuela) abstained from voting, 1 (Brazil) voted against, and 37 (including Great Britain) voted for the convention, while 10 (Chili, China, Colombia, Cuba, Ecuador, Guatemala, Hayti, Persia, Salvador, and Uruguay) made reservations as to Article 15 concerning the nomination of judges at 8 guineas a day each.

When this and other conventions had been disposed of, the final act was signed; and the conference separated after the delegates had covered themselves, their sovereigns, their conventions, and the "progress of human solidarity" with admiration and high-flown compliments.

The declared reason for the assembly of this

conference was, as set forth in its final act, "for the purpose of giving a fresh development to the humanitarian principles which served as a basis for the work of the first conference of 1899"; and its final aspiration, as set forth in the opening speech of M. Nélidow, was to "a fraternity of peoples," and the pursuit of "the luminous star of peace and universal justice for the good of humanity."

But in fact, as will be seen, the only things it did concerning peace were few, vague, and illusory, while those it did concerning war were many, definite, and binding; and it is impossible to rise from a perusal of those lengthy proceedings without the conviction that the only thing the conference was concerned with was not peace but war; that the main, principal, and final purpose of the conference was to diminish naval power at sea and to increase and affirm military power on land; and that its ultimate business was "to draw up" the convention establishing an International Prize Court.

The convention for setting up a permanent Court of Arbitration was indeed concerned with peace. But that convention never became more than a project (*projet*), nor ever took a higher place in the proceedings than that of an appendix to the first wish (*annexe au premier vœu*) of the conference; and as it was left so it remains to this day—in the air. So, too, with the convention (No. 1) for the pacific settlement of international disputes, which was left a mere beautiful shadow embodying

an utterly hollow and wholly ineffectual agreement to "have recourse, *so far as circumstances allow*, to the good offices or mediation of one or more friendly powers . . . in case of serious disagreement or dispute before an appeal to arms," on the strict and cynical condition, however, that "mediation cannot in default of agreement to the contrary have the effect of interrupting, delaying, or hindering mobilisation or other methods of preparation for war." All the other instruments of this marvellous conference are concerned with war itself, and most of them with war at sea; and if at the end of the conference Mr Van Tets Van Goudriaan, who opened it on behalf of Holland as a conference of peace, examined its proceedings, he must have said to himself in the words of the Psalmist: "I labour for peace, but when I speak unto them thereof they make them ready to battle."

Nothing short of a detailed examination and collation of all the fifteen instruments elaborated at the conference would suffice to display the spirit in which the conference sought to arrive at peace and universal justice by the diminution of sea power. But to this would have to be added an equally detailed examination of the discussions described in the *procès verbaux* of the conference (not laid before Parliament or otherwise accessible except in the original French), in order to appreciate the military flavour of the whole proceedings of this conference. To enter into such an examination would be beyond the immediate purpose of this



work; but, in order to assist the reader to appreciate in some measure the work of the conference, some of the more important are printed in Appendix C, while No. 12—the most important of all—is printed in Appendix E as part of the Naval Prize Bill.

The following is extracted from the final act of the conference :—

“The second International Peace Conference, proposed in the first instance by the President of the United States of America, having been convoked, on the invitation of His Majesty the Emperor of all the Russias, by Her Majesty the Queen of the Netherlands, assembled on the 15th June 1907 at the Hague, in the Hall of the Knights, for the purpose of giving a fresh development to the humanitarian principles which served as a basis for the work of the first conference of 1899.

“At a series of meetings, held from the 15th June to the 18th October 1907, in which the above delegates were throughout animated by the desire to realise, in the fullest possible measure, the generous views of the august initiator of the conference and the intentions of their Governments, the conference drew up, to be submitted to the plenipotentiaries for signature, the text of the conventions and of the declaration enumerated below and annexed to the present Act :—

- “1. A Convention for the Pacific Settlement of International Disputes.
- “2. A Convention respecting the Limitation of the Employment of Force for the Recovery of Contract Debts.

- “3. A Convention relative to the Opening of Hostilities.
- “4. A Convention respecting the Laws and Customs of War on Land.
- “5. A Convention respecting the Rights and Duties of Neutral Powers and Persons in case of War on Land.
- “6. A Convention relative to the Status of Enemy Merchant ships on the Outbreak of Hostilities.
- “7. A Convention relative to the Conversion of Merchant ships into Warships. •
- “8. A Convention relative to the Laying of Automatic Submarine Contact Mines.
- “9. A Convention respecting Bombardment by Naval Forces in Time of War.
- “10. A Convention for the Adaptation to Naval War of the Principles of the Geneva Convention.
- “11. A Convention relative to certain Restrictions with regard to the Exercise of the Right of Capture in Naval War.
- “12. A Convention relative to the Creation of an International Prize Court.
- “13. A Convention concerning the Rights and Duties of Neutral Powers in Naval War.
- “14. A Declaration prohibiting the Discharge of Projectiles and Explosives from Balloons.”

Some cursory remarks on these conventions may be permitted.

No. 1. The convention for the pacific settlement of international disputes was signed on behalf of Great Britain without reservation, but is not yet ratified on her behalf.

It is, as already pointed out, only an agreement to have recourse to mediation so far as "circumstances allow," while continuing preparations for war. Such a convention scarcely needs serious consideration; for it carries neither mediation nor arbitration one step farther than either has hitherto gone, and makes neither obligatory upon any state whatever. This, so far as it goes, is a convention of peace.

No. 2. The convention respecting the limitation of the employment of force for the recovery of contract debts was signed on behalf of Great Britain without reservation, and was ratified on her behalf on 27th November 1909.

It is an agreement "not to have recourse to armed force for the recovery of contract debts claimed from the Government of one country by the Government of another country," subject, however, to the condition that the agreement is "not applicable when the 'debtor state refuses or neglects to reply to an offer of arbitration," or fails to comply with an arbitration award as contemplated by convention No. 1. This, too, may be said to be a convention of peace.

No. 3. The convention relative to the opening of hostilities was signed on behalf of Great Britain without reservation, and was ratified on her behalf on 27th November 1909.

It is an agreement that hostilities should not (*ne doivent pas*) begin "without a previous and explicit warning, in the form of a declaration of

war giving reasons, or an ultimatum with a conditional declaration of war." This agreement is in complete accordance with the principles of the law of nations. But there is no principle which in modern times has been so completely, so consistently, and so recently disregarded; nor is there any prospect that it will in future be more respected whenever it concerns the interest or, as may be thought, the safety of a state to disregard it. This is eminently a convention of war.

No. 4. The convention concerning the laws and customs of war on land was signed on behalf of Great Britain without reservation, and was ratified on her behalf on 27th November 1909.

It embodies regulations for war on land which illustrate throughout the determination of the conference to regard as sacred all existing powers of military belligerent commanders. Thus, by Article 23 (*g*), it is forbidden "to destroy or seize enemy property *unless* such destruction or seizure be imperatively demanded by the necessities of war," whereof the general in command on the spot is, must be, and is left to be, the sole judge. If he deems such destruction or seizure to be demanded by the necessities of the war, he may destroy or seize whatever he pleases. Again, by Article 27, "in sieges and bombardments all *necessary* steps must be taken to spare, *as far as possible*, buildings dedicated to public worship, art, science, or charitable purposes, historic monuments, hospitals, and places where the sick and wounded are collected,

*provided* they are not being used at the time for military purposes." Here again, the general in command is the sole judge of what is "necessary," of what is "possible," and of whether the buildings in question are or are not being used for military purposes. And from him there is no appeal.

Article 46 prescribes that "individual life and private property" must be "respected," and that "private property may not be confiscated." But nevertheless Articles 48, 49, 51, 52, and 54 authorise the general commanding in an occupied country to collect taxes, dues, and tolls, "as far as is possible," on the legal basis in force at the time, to levy "other money contributions," to make "requisitions in kind and services . . . for the needs of the army of occupation," and in case of "absolute necessity" (whereof he is the sole judge) to seize or destroy "submarine cables."

Article 53 is especially noteworthy as showing the distinction between sea warfare and land warfare. It prescribes that on land, "*except in cases governed by naval law, . . . all appliances adapted for the transmission of news or for the transport of persons or goods, whether on land, at sea, or in the air, . . . may be seized, even if they belong to private individuals.*" This, as will be noticed, carries the powers of the military commander on land over enemy property and enemy appliances to their fullest extent, whether the property be that of the State or of individuals. Very different is the measure meted out to the

belligerent naval commander at sea. This is purely a war convention.

No. 5. The convention respecting the rights and duties of neutral powers and persons in war on land was signed on behalf of Great Britain with reservations as to Articles 16, 17, and 18, but is not yet ratified on her behalf.

As to this convention, it is only necessary to say that, by Article 18, it authorises the neutral to engage in "the furnishing of supplies or the making of loans to one of the belligerents, provided that the person so doing neither lives in the territory of the other party nor in territory occupied by it, and that the supplies do not come from such territory." To agree that a neutral may furnish to a belligerent supplies or money without being held to infringe its neutrality was beyond the capacity even of the British delegates to the conference; and they therefore made reservations with regard to Articles 16, 17, and 18, which thus enlarged the privileges of the neutral to the extent of allowing him so to assist a belligerent. Nevertheless, they signed this convention. Whether it is ever to be ratified, and if so, on what conditions, still remains an open question.

No. 6. The convention relative to the status of enemy merchant ships at the outbreak of hostilities. This was signed on behalf of Great Britain without reservation, and was ratified on her behalf on 27th November 1909. It restricts materially the power of a belligerent over enemy merchant ships

found in its ports at the commencement of hostilities—yet only in a halting and hesitating way, since Article 1 only declares it “desirable” that such a ship “should be allowed to depart freely, either immediately or after a reasonable number of days of grace, and to proceed, *after being furnished with a pass*, direct to its port of destination, or any other port indicated to it.” Article 2, however, hesitates less, and declares that a merchant ship accidentally rendered unable to leave the enemy port within the period contemplated in Article 1 “may not be confiscated”; while Article 3 extends the same immunity to enemy merchant ships “which left their last port of departure before the commencement of the war, and are encountered on the high seas while still ignorant of the outbreak of hostilities.” Article 4 goes still further, for it implicitly covers with immunity from confiscation “enemy cargo on board the vessels referred to in Articles 1 and 2,” though it leaves that cargo liable to be detained until the end of the war, or to be “requisitioned on payment of compensation.” This is manifestly a convention of war.

No. 7. The convention relative to the conversion of merchant ships into warships. This was signed on behalf of Great Britain without reservation, and was ratified on her behalf on 27th November 1909. It lays down the rules under which the privateering declared abolished by the Declaration of Paris is in effect to be restored; for it deals with “a merchant ship converted into

a warship," which is an exact description of the privateer, and prescribes that it must be "under the direct authority, immediate control, and responsibility of the power whose flag it flies"; that it must "bear the external marks which distinguish the warships" of that power, and that the commander must be "in the service of the State." This is manifestly a convention of war.

No. 8. The convention relative to the laying of automatic submarine contact mines. This was signed on behalf of Great Britain with a reservation, but was ratified on her behalf on the 27th November 1909. It prohibits the laying of unanchored automatic contact mines, unless so constructed as to become harmless within an hour after the person who laid them has ceased to control them, or anchored mines unless they become harmless as soon as they have broken loose from their moorings; and it forbids the laying of any such mines "off the coast and ports of the enemy with the sole object of intercepting commercial shipping"—thereby allowing their laying in such places in case they are laid with some other object than that. This is a convention of war.

No. 9. The convention respecting bombardment by naval forces in time of war, which was signed on behalf of Great Britain with reservation of the second paragraph of Article I, and was ratified on her behalf on 27th November 1909.

Article 1 of this convention prohibits "the bombardment by naval forces of undefended ports,



towns, villages, dwellings, or buildings," and provides that such places are not to be considered as defended "solely on the ground that automatic submarine contact mines are anchored off the harbour." But Article 3 declares that after notice given such a bombardment "may be commenced if the local authorities, on a formal summons being made to them, decline to comply with requisitions for provisions or supplies necessary for the immediate use of the naval force before the place in question." Article 4, however, prohibits any such bombardment on account of "failure to pay money contributions." So that a town or a dwelling may refuse cash, but may not refuse provisions or supplies on pain of bombardment. Moreover, "unless military exigencies render it impossible, the officer in command of an attacking naval force must, before commencing the bombardment, do all in his power to warn the authorities." This convention, it will be observed; prohibits that bombardment of the defenceless which no predominant naval power would undertake, but which might well be undertaken by the weaker naval power.

This is clearly a convention of war.

No. 10. The convention for the adaptation of the principles of the Geneva Convention to maritime war was signed on behalf of Great Britain; with reservation as to Articles 6 and 21, but is not yet ratified on her behalf. This is the convention relative to hospital ships and the like. It is

distinguished by Article 7, which prescribes that "in the case of a fight on board a warship, the sick-bays shall be respected and spared as far as possible"—a provision which may be dictated by humanity, but which can hardly be of much effect when projectiles are flying about in so limited a space as that of a ship. Why, having accepted so much, the British delegates should have refused to accept Articles 6 and 21 of this convention, is not explained, nor perhaps explicable, unless on the supposition that these Articles might have necessitated recourse to Parliament.

No. 11. The convention relative to certain restrictions on the exercise of the right of capture in maritime war, signed on behalf of Great Britain without reservation and ratified on her behalf on 27th November 1909. This convention by Article 1 invests with inviolability "the postal correspondence of neutrals or belligerents, whatever its official or private character, found on board a neutral or enemy ship on the high seas"; and by Article 2 exempts a neutral mail ship from search "except when absolutely necessary, and then only with as much consideration and expedition as possible." These articles, in fact, absolutely prevent the examination of official enemy correspondence or despatches even found on board an enemy ship if only it is labelled as "postal," and thereby deprive the belligerent of all means of acquiring the momentous information which before this convention was agreed to might be, and constantly was

thus acquired. Article 5, moreover, declares that "when an enemy merchant ship is captured by a belligerent, such of its crew as are subjects of a neutral state are not made prisoners of war"; while Article 6 extends the same privilege even to an enemy crew, "subjects or citizens of the enemy state," provided they undertake not to serve further in the war.

This is a particularly mischievous convention; but the British delegates accepted it whole. It is manifestly a convention of war.

No. 12. The convention relative to the establishment of an International Prize Court.

This was not signed on behalf of Great Britain, nor ratified on her behalf; but it is brought under the notice of Parliament in the appendix to the Naval Prize Bill, 1910. The time for its ratification, originally fixed as 30th June 1909, has now been extended to February 1911.

This is the convention which would submit the judgment of British Prize Courts and of the King in Council to appeal before an International Prize Court which it sets up. The appointment and functions of the judges are described in the convention, and it perhaps only remains to be added with regard to them, that by Article 20 each one of them is to receive, in addition to travelling allowances, 100 Netherland florins, or approximately 8 guineas, a day while concerned in the business of the court. Article 43 prescribes that "all questions are decided by a majority of

the judges present." "The court considers its decisions in private and the proceedings remain secret."

This is the convention to which it is proposed to give effect by the Naval Prize Bill, which Bill implicitly authorises its ratification by His Majesty as soon as the amendments made by the Bill have been enacted. Of all the conventions, it is the worst and the most dangerous. So far, however, it has neither been signed nor ratified on behalf of Great Britain. It never should be.

No. 13. The convention respecting the rights and duties of neutral powers in maritime war, signed on behalf of Great Britain with a reservation as regards Articles 19 and 23, but not yet ratified on her behalf. No great exception is to be taken to the articles of this convention, and it is to be presumed that, in reserving their assent to the Articles 19 and 23, the British delegates, or those who instructed them, must have had in view the need for submitting to Parliament the legal points therein involved.

No. 14. Declaration prohibiting the discharge of projectiles and explosives from balloons.

Signed on behalf of Great Britain without reservation, and ratified on her behalf on 27th November 1909. The title of this convention sufficiently explains its purpose and effect. It is a war convention.

The whole effect of all these conventions<sup>1</sup> taken together, and of the changes they make, can only be appreciated by a skilled jurist. They amount to a revolution in the law of nations.

Nevertheless, most of them, as will have been seen, are already not only signed but also ratified—the ratification having been made without any direct sanction of Parliament, by H.M. Government alone, assuming to act in exercise of His Majesty's prerogative. How far that prerogative suffices to authorise such acts need not here be inquired.

Thus then the case was left on the 18th October 1907. During four months the 156 delegates of the 45 states—invited by Russia to do the bidding of Germany, with the acquiescence of Great Britain—had played the part of great personages, juggling in the sight of Europe with the duties and destinies of nations. Those of them who were articulate had babbled unceasingly of humane principles, international amenities, pacific "currents," "fraternity of peoples, the luminous star of universal peace and justice, the advancement of civilisation and the good of humanity; they had admired each other and each other's eloquence at interminable length; they had divided themselves into commissions and sub-commissions. And, in the end, they had

<sup>1</sup> The text of conventions Nos. 6, 7, 8, 9, 11, and 13 is set forth in Appendix C. For the text of the remaining conventions, the reader is referred to Parliamentary Paper No. 6 of 1908, Cd. 4175.

proposed to set up a new Court of Prize without any law to administer beyond its own will, and to subject to its decrees all naval war and all nations.

It was all a renewal of the conspiracy against British naval supremacy, started by the Dutch in the seventeenth century, revived by the Prussians (now called Germans) in the middle, and entered into by Russia at the end, of the eighteenth century; brought to a very considerable success in the nineteenth century; and now, in the twentieth, to be at last crowned with a final triumph over Great Britain. To subject her maritime rights and their exercise in every respect to an arbitrary tribunal unfettered by law, deciding in secret by a majority permanently against her—this would be a triumph, not merely in essentials, as was the Declaration of Paris of 1856, but in all. This would for ever destroy “the tyrant of the seas,” and would leave the military powers of the continent thenceforth untouched and unaffected by that sea power which had hitherto checked them in their beneficent application of military reasons to the great cause of humanity, civilisation, and luminous stars.

The plan was infinitely bolder, wider, and more complete than any that had preceded it. And there was no longer a Cromwell, a Chatham, or a Pitt to repel the conspiracy and defy the conspirators. There was but a bleating Foreign Office, an amiable Foreign Secretary, and, behind these, a people who had ceased to believe in anything but

peace, and many of whom were incessantly denouncing all war as barbaric and sinful, and as incessantly appealing with Baron von Bieberstein to the sole virtues and sole claims of humanity, civilisation, and luminous stars.

The conjuncture then was most favourable for the final and complete success of the secular conspiracy against the predominance of Great Britain at sea, and for its destruction, not by force—for that was beyond the capacity of the conspirators—but by the secret, simple, silent action of a judicial tribunal set up for the purpose. The 156 representatives of the 45 nations were tame enough and silent enough. The conference was harangued, managed, and conducted by the few great powers who knew what was meant and how they meant to get it. All the rest voted as they were told, except only when there was a question as to whether all the powers, big and little, should have an equal share in the appointment of the judges, with their salaries, privileges, and allowances. In the division of this plunder the little powers were left out, and some of them made reserves “while others abstained altogether from voting.” But generally speaking, Luxembourg and Ecuador, Hayti and S. Domingo tunelessly swelled the chorus of the directing powers. And yet it was all muddled. The thing was a trifle overdone. The International Prize Court was left too palpably arbitrary and unprovided. There was not a rag either of

law or of principle, much less of tradition, to cover its shocking nakedness. To erect a court to be composed of judges entirely unknown, to be nominated by states many of them equally unknown, and to leave such a court wholly unprovided with rules, laws, or traditions, was going beyond any luminous star yet known. The world at large was startled. It was at once said that to accept such a court without any law to guide it was impossible. • Sir Edward Fry, Sir Ernest Satow, Lord Reay, Sir Henry Howard, General Sir E. R. Elles, and Captain C. L. Ottley, R.N., might deserve the order of the luminous star and subsequent immortality for having accepted it on behalf of Great Britain—but it was still impossible. A court without a law was inconceivable. Even though destined to advance humanity and civilisation, this could not be endured. There must at least be a law as well as a court.

The reception in Great Britain of that one of the Hague Conventions which set up the International Prize Court was as unfavourable as possible—excepting only amongst those emotionalists who fondly believe that war can be waged with words, and that the interests of humanity demand the surrender by Great Britain of her maritime rights and powers. *The Times* of 30th September 1907 thus described what had been done :—

“This project is utterly inadmissible by this country. . . . It is nothing less than the surrender



into the hands of this naval tribunal of rights and interests which the most sagacious of our race have ever deemed essential to our greatness and our safety. . . . All our sailors and all our statesmen have taught us that our power to destroy the commerce of our enemies is one of our most trenchant weapons in war and in 'diplomacy. . . . The constitution of the panel is such that the nominees of powers who have always repudiated English doctrines of maritime law, together with the nominees of states notoriously upon a low plane of civilisation will form a permanent majority of the full court. . . . Within the limited scope of its authority it [the conference] has handed over, as we have shown, some of our supreme interests to the uncovenanted mercies of an alien tribunal. Fortunately the mistake is not past remedy. The convention need not be ratified until 30th June 1909. There is still time before then to thresh out these and other kindred subjects thoroughly, and to conclude precise and binding agreements upon them if agreement be possible. Unless and until this indispensable condition precedent is fulfilled, the project adopted at the Hague must remain a project to us. We cannot ratify it. We cannot give any foreigners *carte blanche* to make laws for our fleet, and to shorten at their discretion our arm upon the seas."

From the date of the final act of the conference, this has been felt by all who have given attention to the subject, that it would be mad to set up an International Prize Court without any law to guide it beyond its own notions and desires; and

that, if there was to be such a court, the agreement as to the law it was to administer must precede its establishment.

Yet it is the very contrary that is now proposed, and proposed by the British Government. Parliament is to be asked forthwith to set up this lawless court and to leave untouched, unregarded, and undecided the law it is to administer. For *that* is enshrined, if anywhere, in the Declaration of London, with which the Naval Prize Bill has nothing to do and which the Government declares needs no Parliamentary sanction.

H.M. Government say, in effect, to Parliament :—

“Enact the Naval Prize Bill which accepts the convention, which erects the court; that is all we ask you to do, all that we submit or mean to submit to you. As for the law which the court is to administer, we have settled that ourselves, by ourselves alone. It is all in the Declaration of London. That you will not be asked to sanction. That will not even be submitted to you, except possibly for an otiose academic discussion. That, as we told you on 21st July, ‘does not require the sanction of Parliament,’ and for that, as we told you on 27th July, ‘no legislation is necessary.’ You the Parliament accept the court; we the Government make the law. With the law you have no concern, ~~no~~ rights over it, and no claim even to any discussion upon it, except such as we may choose to give you.”

The situation so stands to-day.

How that situation was arrived at; how the Declaration of London was prepared and elaborated; what it finally became; and what are the scope and effect of the Naval Prize Bill—all this remains to be shown.

## V

### BRITISH INSTRUCTIONS FOR THE NAVAL CONFERENCE OF LONDON

THAT there must be a law as well as a court, was reluctantly and sadly acknowledged, though the acknowledgment up-ended the whole work of the conference. To rescue that work and to provide the law for the court was manifestly the business of Great Britain, for whose destruction both were contrived and intended. Sir Edward Grey, therefore, took the initiative. Four months after the end of the conference—on 27th February 1908—he addressed a circular to H.M. representatives at Berlin, Madrid, Paris, Rome, St. Petersburg, Tokio, Vienna, Washington, and the Hague, proposing the assembly at London of another conference to settle what sort of thing the law should be. He made his proposal, not to the 45 convened states which had invented the court, but only to 10 of them. For this neglect of 35 out of the 45 states, he gave the reason that:—

“The rules by which appeals from National Prize Courts would be decided affect the rights

of belligerents in a manner which is far more serious to the principal naval powers than to others."

An argument which cannot be received without some respectful doubts. For if the wisdom of all the 45 were not too much to provide the court, it would seem that at least an equal wisdom must be needed to make the law, and that the wisdom of the 10 would be too little. Or, perhaps, we are to suppose that the wisdom of the 45 had proved un wisdom, and that more wisdom was to be expected from fewer counsellors. Moreover, if the court set up was—as this court was—to have the power of overriding all rules with its own notions of justice and equity, if it was to be bound—as this was—by "no legal system of proofs," then it would seem that the court was everything and the rules nothing, and that whatever the 45 states had already done, nothing the 10 could do would mend. Which was in truth the case.

Moreover, if, as stated, the object was to commit the framing of the law to the "principal naval powers" alone, then the weeding out of the 45 was not complete. Neither Austria-Hungary, nor Spain, nor Holland can in any sense be described as of "the principal naval powers"; neither can Russia be properly so considered, nor Italy either, unless upon a very undue enlargement of the meaning usually and properly attached to the phrase. Wherefore,

at the very least, three, and more properly five, should have been weeded out of the ten powers, in addition to the thirty-five already excluded. There are then left but five—Great Britain, the United States, Germany, France, and Japan—which powers alone, having regard either to naval history or to present naval strength, can be considered to be principal naval powers. And even then there would be no equality as among themselves; for even among the five there are only three—the United States, Great Britain, and Japan—to whom naval power is as important as military power; the remaining two—Germany and France—rely mainly upon soldiers, and only in an infinitely less degree upon sailors. But when naval powers, not principal, were introduced—when Austria and Italy, the allies of Germany; Holland, the present dependent and future victim of Germany; and Russia, so long the close associate of Germany—when these were introduced, then a great preponderance was given to the military powers in the discussion of naval problems with which not their existence but only their ambitions were concerned. Possibly Sir Edward Grey, during the confidential *pour-parlers* which preceded his circular, sought to restrict his invitations to those five which are in fact “the principal naval powers”; possibly he was overruled in this. But, however that may be, he ended by inviting, not alone these, but five others as well. It was not indeed the cosmopolitan

mob that had set up the International Prize Court ; but it was a smaller mob, sufficient for what remained. Great Britain had been hustled out of her prize jurisdiction by the 45 of the Hague Conference : she was now to be hustled into a new law of nations by the 10 of the London Conference—as was in the end duly done.

In issuing this invitation, Sir Edward Grey frankly avowed that what he had in his mind was not so much either the new International Prize Court or the invention of a law for its use, as the British Parliament and the creation of some semblance of a case for inducing it to accept the Hague Convention and the court thereby created. He wrote :—

“H.M. Government are deeply sensible of the great advantage which would arise from the establishment of an International Prize Court [meaning thereby the court already set up by the convention], but in view of the serious divergences which the discussion at the Hague brought to light as to many of the above topics [contraband, blockade, and so forth], after an agreement had been practically reached on the proposals for creating such a court, *it would be difficult, if not impossible, for H.M. Government to carry the legislation necessary to give effect to the convention, unless they could assure both Houses of the British Parliament that some more definite understanding had been reached as to the rules by which the new tribunal should be governed.*”

This is a plain avowal that, unless the Government could assure Parliament that there was a definite law as well as the court, it would be difficult, if not impossible, for them to induce Parliament to accept the court.

Nevertheless, and in spite of all this, the Government now proposes to ask Parliament in November 1910 to agree to the Naval Prize Bill, which sanctions the court alone without the law; and to leave to another time and another procedure—which, according to the Government, will not require to be sanctioned by Parliament—the law itself.

The powers interested in pushing the conspiracy against British sea power to its final triumph, now so near, could not hesitate to join in any plan for enabling the British Government to carry the court through the British Parliament. For they knew well that, while it was easy enough to deal with the British Foreign Office, it might be very hard to deal with the Parliament. They therefore all eagerly accepted the London Conference for law-making.

The conference was preceded by a "preliminary exchange of views between the several Governments which had agreed to send delegates." These Governments were, on 8th July 1908, provided by Sir Edward Grey with a "memorandum setting out the views of H.M. Government founded upon the decisions in the British courts as to the rules of international law on the points enumerated in the



programme of the conference." A view founded upon a decision is not very formidable, nor, it may be added, very respectful to those eminent and honoured British judges whose decisions had gone so far to build up the law of nations. But H.M. Government professed no convictions as to this law. It only held views; and it presented these views so as to suggest that, if they were not agreeable to the other nine powers, they could readily be changed.

That they would be changed with alacrity was made evident by Sir Edward Grey's instructions of 1st December 1909 to Lord Desart, who was named as plenipotentiary for Great Britain. His lordship was to be assisted by the Captain (now become Admiral Sir Charles) Ottley who had figured at the Hague Conference, and by Rear-Admiral Slade, as well as by Mr Eyre-Crowe and Mr C. J. B. Hurst of the Foreign Office. Their instructions were, in brief, to abandon at once some of the most vital principles of international law, as hitherto declared and enforced by British Prize Courts; and in respect of these to range themselves on the side of the contrary principles, always hitherto denounced and repudiated by those courts. As to other of these principles, they were to wrangle before surrendering them; as to none were they instructed firmly and finally to stand out in a refusal of surrender.

Throughout Sir Edward Grey's instructions there ran a settled, avowed purpose to bring about

the abandonment by Great Britain of almost every important principle she had declared, justified, and acted upon in war, up to the time when her people had ceased to know by experience what war was, and when her statesmen had ceased to understand that, for her at least, everything depended, in war, upon adhesion to those very principles and full exercise of the maritime rights which they sanction. In dealing with war he forgot its grim realities, and looked at it as though it were peace; as if its terrible necessities were capable of being dealt with by the very respectable but wholly inapplicable doctrines of charity and good-will; and as if rules which contemplate our being belligerent should be considered as though they contemplated our being neutral. Of this certain illustrative instances may be cited.

1. Great Britain has, when engaged in serious war, always been the champion of the belligerent right to distress and destroy an enemy, against the neutral claim to interfere with that distress and destruction. Sir Edward Grey changes sides and appears as the champion of the neutral against the belligerent.

2. Great Britain has always denied that neutrals have or could have any right to supply, either to one or to both belligerents, that assistance in the war which is provided by furnishing either with such means of resistance or offence as are called "contraband." She has always declared the law of nations to be—as, in fact, it is—that

for a friend of both belligerents to place in the hands of one of them arms against the other is an abandonment of the neutrality which forbids such an assistance to either. And she has, therefore, consistently captured, condemned, and confiscated all neutral vessels engaged in carrying contraband to her enemy—an exercise of right which even the Declaration of Paris sanctioned and allowed. Sir Edward Grey takes a wholly contrary view. He looks upon trade in contraband, not merely with toleration, but with positive affection. This is what he says of it :—

“Any proposal tending in the direction of freeing neutral commerce and shipping from the interference which the suppression by the belligerents of the trade in contraband involves, *should receive your sympathetic consideration*, and, if not otherwise open to objection, *your active support*.”

It would be interesting to know whether Sir Edward would apply to individuals the same principle as to nations—whether, seeing two men locked in a deadly struggle, he would sympathetically consider and actively support a friend of both who should furtively hand a knife to one of them, and whether he would prohibit the capture of that knife by the other of them as being an interference with neutral commerce. Apparently he would.

3. Great Britain has always sought to deprive her enemy of assistance by confiscating all contraband whatever—that is, all that the facts and —

circumstances might show to be contraband—which must vary with time, place, and conditions; which may to-day be hemp, tar, tow, or tallow; to-morrow rails, biscuits, or cheese; and, the day after, aeroplanes. Sir Edward Grey is now for a strictly exclusive narrow definition of contraband, and for its strait limitation independent of circumstances—all to the enlargement of neutral trade and the narrowing of belligerent power. He writes:—

“H.M. Government are now *desirous of limiting* as much as possible the right to seize for contraband, if not eliminating it altogether. In proportion as the lists of contraband are reduced—and *there is good ground for hoping that this will be successfully done in a large measure*—the value of the right to seize for contraband diminishes.”

It does indeed diminish. And exactly in the same degree diminishes the power of the belligerent to stop the neutral from taking part against him in the war, and from giving that illicit, treacherous, unlawful, contraband help to the enemy which is the very negation of neutrality.

4. But while Great Britain has always insisted on the neutral either remaining neutral or being subjected to at least some of the risks and penalties of war, Sir Edward Grey now holds that the modern spirit requires us to allow the neutral to take in the war at least this part of supplying contraband with all the profits and none of the risks. Having already very truly pointed out that

the less contraband there is the less you can capture, he proceeds :—

“Whilst accordingly, on the one hand, the importance to a belligerent *of the right to seize vessels under convoy* has lost much of its value, *the principle of exemption* is, on the other hand, favourable to neutral trade, and *in conformity with the spirit of British policy.*”

If this be in conformity with the British policy of to-day, it is but another striking instance of the abandonment of that policy which was British in times of real war. There is nothing Great Britain has more strongly insisted upon than the belligerent right to search and, if need were, to seize and capture all vessels, whether under convoy or not, reasonably suspected of violating the law; the right being exercised—let it never be forgotten—at the risk to the captor of being condemned, if wrong, in heavy damages. This right Sir Edward Grey now throws clean overboard. Complete exemption of convoyed vessels from capture (as well as from search or visit) is, he now holds, in conformity with the spirit of British policy.

5. So again with breach of blockade. The British doctrine has always been that a blockade-breaking vessel may be pursued and captured at any time until she has completed her homeward voyage. But His Majesty's Government is ready to surrender this too. The statesmen and seamen of former times who knew what war was, where

its stresses came, and what the importance was of bringing blockade-breakers to book, held it as essentially important that the blockade-breaker should not be relieved of the risk of capture at least till he had reached his own port; and that if he were so relieved, the enforcement of blockade would be impossible. A similar rule allowing the capture of a house-breaker, at least between the house he had broken and his own home, would be considered not too hard upon the house-breaker, but rather too hard upon the constable. Yet:—

“H.M. Government are advised that the acceptance of the latter views [that the blockade-breaker shall be free if the pursuit is once abandoned, and shall not be capturable during the rest of his voyage] would not be likely to inflict any material injury on the interests of Great Britain. They therefore consider that it will not be necessary to insist on the rigorous adoption of the British principle on this point.”

Here it is to be pointed out that, since the prohibition by the Declaration of Paris of the capture of enemy goods in the neutral ship, blockade is practically the only effectual means left to the naval belligerent of hampering the enemy's trade; and that both blockade and the capture of blockade-breakers have therefore assumed a far greater importance than ever they had before. The surrender on this point is therefore more serious and disastrous than ever it would have been before.

these, Sir Edward instructed his delegates to agree to the foreign doctrine of destruction, if "justified by an imperative military necessity,"—whereof the immediate judge could only be the military captor himself, carrying out on the spot the act of destruction. This indeed was to be subject to his subsequently persuading the International Prize Court that he acted on the imperative military necessity contemplated; but meantime he was authorised to sink or burn as many neutrals as he might choose to destroy. And a court composed like this of fifteen judges, whereof only one British, would probably not be hard to persuade. Anyhow, the instructions were, not to stand out for the British rule which, with or without agreement, has hitherto been enforced by British courts even against British captors to their great cost and damage.

7. Then, again, as to the carriage by a neutral vessel of enemy despatches. No more important service can be rendered to a belligerent against his enemy than the transmission under cover of neutrality of orders or information which may perhaps materially effect the issue of the campaign, or even of the war itself. Nothing in itself can be a more treacherous abandonment of neutrality; and accordingly this has always justly been held to render the treacherous neutral carrier liable to condemnation. But, says Sir Edward Grey:—

"No great importance is likely to be attached in future to the chance of seizing enemy despatches"

on board neutral vessels, since it now suffices to include such despatches in the ordinary postal correspondence, in order to render them immune from seizure under the terms of the convention relative to certain restrictions on the exercise of the right of capture in maritime war recently signed at the Hague."

Now, the convention here mentioned is No. 11 of the thirteen conventions elaborated at the Hague Conference of 1907, together with the convention for the establishment of the International Prize Court. It related to "certain restrictions on the exercise of the right of capture in maritime war." It was signed on 18th October 1907, "without any reservations" by the British delegates, and in November 1909 was, without being submitted for the sanction of Parliament, ratified on behalf of Great Britain.

This convention declares that the postal correspondence of "neutrals of belligerents, *whatever its official or private character*, found on board a neutral or *enemy* ship is inviolable." Very different are the stipulations embodied in convention No. 4, "concerning the laws and customs of war on land," which was also signed "without any reservations" by the British delegates. While, at sea, all postal correspondence found in an enemy ship is, by convention No. 11, declared "inviolable," convention No. 4 declares that, on land, not alone postal correspondence, but "all appliances adapted for the transmission of



news . . . may be "seized even if they belong to private individuals"—except (and let this exception be remarked) "except in cases governed by naval law." So that while the august general on land may seize all, the despised admiral at sea must not even so much as look at it. In which appears an impudent avowal of the settled determination that to land power all shall be lawful, and to sea power, nothing. And in which—seeing that both conventions were signed on the same day—there was a touch of humour which appears to have escaped Sir Edward Fry and his colleagues, who signed both "without any reservation." So that having in 1907 agreed that all postal correspondence shall be inviolable, Sir Edward founds upon that surrender the further surrender of enemy despatches as being of no great importance—although in times past they were repeatedly found to be, and in the future may as well be, of the very highest importance.

8. The transfer to a neutral of an enemy merchant ship during or on the eve of war is a question which has become of the greatest moment since the Declaration of Paris of 1856. For that Declaration gives immunity from capture to enemy goods in neutral ships. The obvious effect of this is to drive the goods of the weaker belligerent into the neutral ships, whose flag now gives to them that immunity from capture, which before the Declaration they could nowhere obtain. The gain was wholly to the weaker belligerent;

the stronger, having necessarily at least a partial command of the sea, would profit but little; and if having complete command, could neither need it at all nor profit by it, nor experience anything but harm from it. Thus it has been since 1856 as much to the interest of the weaker naval powers as, against the interest of the stronger—and therefore most especially of all against the interest of Great Britain—to render the transfer of the belligerent merchant ship to the neutral as easy as possible—and even when the transfer is only colourable and fraudulent, to secure, if possible, its recognition. Now the law of nations, as declared by British Prize Courts is that such a transfer, made in good faith, is in itself good; but that it must be shown to be good by the claimant of the ship, and will be held invalid if the facts and circumstances are such as to afford good ground for the conclusion that there has been no real but only a pretended transfer made to avoid capture, as in a blockaded port or during a voyage. Nothing could be more reasonable or more equitable. Sir Edward Grey's instructions, however, are these:—

“His Majesty's Government think that the British delegates should maintain this view [that the onus of proving the *bona fides* of the transfer should rest on those concerned therein] at the conference. They *hope* that it may be possible to convince the representatives of the other powers of its justice, and that an agreement may

be arrived at on the subject. It seems, however, doubtful whether any such agreement could be established on the basis of a statement or an interpretation of *existing law*, and the solution *may* accordingly have to be sought by way of a conventional stipulation."

Here again is a complete absence of settled conviction or resolution. Thinking and hoping and doubting, Sir Edward at last leaves this most grave question to such stipulations as the other powers could be got to agree to. Yet this point is undoubtedly one which in any future wars will take on an importance hitherto unknown. On the retention of the existing sound principle it will depend in future whether the trade of the weaker belligerent, driven from the seas under its own flag by the superior command of the stronger, shall be enabled to take refuge under a false character and a false neutral flag, and to be carried on as easily, or almost as easily, as in peace, by a fraudulent, unreal, pretended transfer of their merchant ships to neutral owners. That on such a point of such vast import H.M. Government should not have stood firm is astonishing.

9. The transformation by a belligerent of merchant ships into warships on the high seas during war is a question cognate to that of the conversion of belligerent-merchant ships into neutrals. In practice, the question is whether a belligerent has the right to commission a man-of-

war elsewhere than in its own ports under its own jurisdiction; whether it can, for example, authorise the sudden transformation outside those ports by a mere production of paper and bunting into a ship of war, of a ship which, up to that transformation, had set forth as, and claimed to be only, a merchant ship entitled as such to neutral hospitality, and unlimited sufferance, and disentitled to search or seize any other vessels on the high seas. In effect, the question is, whether a ship may set forth as a merchant ship and suddenly, secretly, and when out of all reach declare itself to be a ship of war; and, if so, whether it may as secretly and suddenly reconvert itself into a merchant ship. Such a question can hardly require a serious answer. To the use of masks and false noses, to be donned and doffed at will, there is a limit even in war.

This claim for conversion is a claim not merely to revive, but enormously to exaggerate, privateering, which was affected to be for ever abolished by the Declaration of Paris of 1856, and the abolition of which was presented to and accepted by Great Britain as the price of and compensation for her right to capture enemy goods in neutral ships. Privateering is avowedly to be revived—is indeed already revived for Germany by the Prussian Decree of 24th July 1870 establishing the “voluntary marine,” which are privateers in all but name, as are the similar ships adopted by Russia. But the privateer was at least commissioned in the

ports of the belligerent after lodging security-money and giving bail for good behaviour. When thus commissioned, she became (to use Lord Stowell's language) "manifestly a ship of war"; and it was as such that she left the belligerent's port, wearing the belligerent flag, her character and purpose manifest and known to all. None of the consideration shown to the merchant ship was hers. Met by the enemy, she was, if possible, sunk, burnt or destroyed out of hand without mercy. All which, too, enured to the advantage of the stronger and the injury of the weaker belligerent.

Once the claim for conversion on the high seas admitted, the case will be wholly changed. The new privateer will slink out of her own port as a merchant ship. As such, starting say from Bremen, she may proceed north about round the Orkneys, say to Buenos Ayres, having perhaps freely received hospitality on her way at the neutral ports of Christiansand, Brest, Lisbon or Cadiz, at each of which she has coaled, refitted, and re-provisioned, and remained as long as she pleased. For she calls herself a merchant ship—perhaps even, as well or instead, a vessel "employed on religious, scientific, or philanthropic missions," and therefore (by Article 4 of the convention No. 11, which was in 1907 "signed without any reservations" on behalf of Great Britain) "exempt from capture." At Buenos Ayres she refits and reprovisions and notes the British vessels with cargoes worth having soon due to leave. She then proceeds—always as

a merchant ship—from neutral Beunos Ayres to neutral Rio de Janeiro, where she again coals, refits, reprovisions and takes notes, and whence she proceeds on her purely mercantile, scientific, or philanthropic mission accompanied by the good wishes of all. Suddenly, when she has arrived at that crossing-point of the trade routes which the *Alabama* found so rich in prizes, the captain calls the crew on deck, produces from his pocket a commission which has been there ever since he left Bremen, breaks out a pennant, gets up from the hold some light artillery, declares himself a naval captain and his ship a man-of-war—and forthwith proceeds to play havoc with every merchantman he can overhaul. Every enemy merchantman he will sink out of hand ; though not without regret, for if he could but put a prize crew aboard and send her to Bremen, her certain condemnation would enrich himself and his crew. But, because of the accursed British cruisers from which he himself has barely escaped and which would certainly recapture them on the way, he dare not attempt this. So he sinks them all, or nine out of ten of them, putting the crews aboard the tenth with the provisions collected from the other nine, and orders to proceed by the longest way to the remotest neutral port. 'As to neutral ships, there is a little more difficulty ; but not much. To send them "into such port as is proper for the determination there of all questions concerning the validity of the capture," as prescribed by Article

48, would expose them equally to the curiosity at least and the probable visit of the British cruisers. And it is clear that so to do would "involve danger to the safety of the warship" he now commands, for it would probably put the British cruisers or even a British battleship on his own track, and thus bring about his own capture or destruction. It is still more clear that to do so would "involve danger to the success of the operations in which "she [his warship] is engaged at the time," for those operations consist in capturing merchantmen without being caught by cruisers. Wherefore, under the authority of Article 49, he sinks neutrals too, whenever he thinks that sinking is better for his own side than release. In short, he has a high time. It lasts until he is sighted by a British cruiser. When that disagreeable moment arrives, and he sees the White Ensign flaunted and the boat lowered to visit him, then he will probably have nothing left but to surrender and become a prisoner of war, which is undoubtedly a loss to his country, but yet a loss which may be infinitely more than compensated by the far greater loss he has already inflicted on his country's enemy. Yet that is not certain to be his end. For when he thinks he has done his fair share of mischief to the enemy, he may reconvert himself into a merchantman. The pennant disappears into the signal box, the commission goes back into his pocket, the "external marks which distinguish the warships of their nationality" (Article 2 of Convention No. 7

of the Hague signed "without reservations" on behalf of Great Britain) are doffed: he is once again a merchant ship. With good fortune he may again reach Bremen north about, receiving on his way that entertainment which is denied to men-of-war but due to merchantmen, first at Rio de Janeiro again, and next at all the other ports on his way home. It is true that on his way he may be captured by those accursed British cruisers; but, if that happens, he is captured as a merchant ship. Under Convention No. 11 of the Hague Conference 1907 (signed "without any reservations" on behalf of Great Britain) all his "postal correspondence of neutrals or belligerents, whatever its official or private character" (see Article 1) is "inviolable"; and if he is "detained," it must all be forwarded (including all his own eloquent accounts of his exploits, and all the useful information for further similar exploits) "by the captor with the least possible delay." Moreover, by Article 5 of this same Convention No. 11, which is now applicable to his merchant ship, "such of its crew as are subjects or citizens of a neutral state are not made prisoners of war." Nor is that all. By Article 6, neither he himself nor any of his crew, nationals or neutrals, can be made prisoners of war, "provided that they undertake on the faith of a written promise not to engage while hostilities last in any service connected with the operations of the war." To undertake this—and to observe it too, as well as such undertakings have usually been observed—



may be better worth while than to accept the hospitality of a British prison; and once the undertaking given, off home go all, captain and crew together, leaving the British cruiser with the ship alone to show.

This is not a burlesque. This is war as seriously contemplated and prepared by British statesmen of to-day.

Even to this, Sir Edward Grey's instructions dealt out, not a plain rejection, but tolerance suggesting a compromise, and adding:—

“But any other suggestions which may be made in the desired direction [that is, in the direction of free conversion] His Majesty's Government will be ready to examine sympathetically.”

It may be remarked, by way of parenthesis and anticipation, that when the questions whether a vessel might be transformed on the high seas from merchantman to warship, and whether she might then be retransformed, came to be considered in the conference, Germany, Russia, and France pronounced in favour of conversion; but, as Baron Taube, the Russian delegate, sorrowfully recorded, “the point of view of these three powers represents, it appears, the opinion of a minority of the conference.” All the other seven powers (Austria, however, with some leaning towards it) pronounced against the claim for unrestricted transformation and retransformation.

Notwithstanding this, the commission reported, not, as might have been expected and as propriety seemed to demand, that the proposals had been defeated and dismissed and ended by seven to three—but that “the questions remain entire”; which meant that every nation went away with the right to maintain its own view, and that while Germany, Russia, and France will insist on and will presumably exercise a right to transform and retransform at will, the other seven will deny the right and will presumably not exercise it. At any rate, in this case Sir Edward Grey’s proposals for suggestions in the desired direction, and his readiness to examine them with sympathy, came to nothing.

10. Enemy property and how determined as such, has always been a point of prime importance in Prize Courts. For in most cases this lies at the bottom of all; and when once a decision is reached that the goods or the ship is or is not enemy property, all the rest usually follows of necessity. The principle, therefore, upon which enemy or neutral character is to be affixed to ship or goods, is always of the utmost consequence. Such a principle is not easy to arrive at, for property takes on an almost infinite variety of forms, absolute and conditional, and the interests in it, direct and indirect, as infinite a variety of characters and complexities. To lay down a single simple unfailing test or presumption is impossible. The only way is to take into account all the facts and

circumstances, and to decide upon and after their full and due consideration. That has been the way of British Prize Courts; and as they held, so those will still hold who have considered all that is involved in the notions summarised in the single term property.

British Prize Courts accordingly have always held that, whether for ships or goods, the property in either must be decided to be that which was established, not by any one fact or circumstance alone, still less by any hard and fast rule or presumption alone, but as a rational conclusion reached by giving due relative weight to all the facts, circumstances, and presumptions. This was equally true for ships as for goods, with only this difference, that a neutral flag worn—if worn lawfully—by the ship, was admitted *prima facie* to raise the presumption that the ship was neutral property. But this presumption was not always supported; it was occasionally destroyed by the other facts. At this day it would far more often be so destroyed. Thus there is a vast fleet of ships running at this day, every one of them owned by the Mercantile Marine Company of the United States, yet every one of them wearing the British flag by a very flagrant, yet, as it is held, a very legal, evasion of the British law, which restricts the wearing of that flag to British owned vessels. Yet Sir Edward Grey's instructions are these:—

“His Majesty's Government consider that it would be right to assent to the principle that the

test of the nationality of the ship should be the flag which she is entitled to fly."

Wherewith away go all the other facts, however strong, and in comes the single test, however false and weak.

In the case of goods, the British courts took the same way as with ships, of considering all the relevant facts. They held that what mainly determined the character of the owner was his domicile then subsisting, the place of his habitation, and the seat of his interests; but that the property (to quote Lord Stowell and Mr Justice Story), "may acquire a hostile character altogether independent of his (the owner's) own peculiar character," and that "there is a traffic which stamps a national character on the individual independent of that character which personal residence may give him." But Sir Edward Grey dismisses all as though it were a mere question whether the single test of domicile or some other single test is to be applied. He first incidentally makes a remarkable avowal of the effect of the Declaration of Paris:—

"Enemy property, except contraband, is by the Declaration of Paris exempt from seizure when on board neutral vessels; and it is probable that in any war in which one of the belligerents had a decided naval preponderance, the enemy's mercantile marine would be speedily driven from the seas, and that consequently *opportunities for capturing*

*enemy property on board enemy ships would rapidly disappear as the war proceeded."*

The probability that all the enemy's property would take refuge in neutral ships, that all of it would, under the Declaration of Paris, be protected by the neutral flag, and that there would consequently be none of it capturable, is used ingeniously :—

"Whilst, therefore, His Majesty's Government consider that the test of domicile is in every respect preferable, they do not think the principle involved is of such importance as to make insistence upon it a vital matter."

Wherefore the delegates are—as usual :—

"Not to take a determined stand on its maintenance should such an attitude stand in the way of reaching any agreement."

The instructions throughout may not unfairly be summarised as instructions to stand out upon nothing, to reach an agreement upon everything—any agreement whatever, but some agreement.

Here again it may be parenthetically observed that, as in the case of the transformation, the blessed agreement to which all was to be sacrificed was, in this respect, not reached by the conference ; for "unanimity could not be obtained" : so that while Article 57 of the Declaration laid it down that "the neutral or enemy character of a vessel is

determined by the flag she is entitled to fly," and Article 58, "that the neutral or enemy character of goods found on board an enemy vessel is determined by the neutral or enemy character of the owner," these articles left undetermined the questions of how the right to fly the flag is to be ascertained, and how the character of the owner is to be established—whether by domicile, by nationality, or by all or any of the other circumstances. Such an uncertainty must leave these vital questions wholly to its own notion of the "general principles of justice and equity"—which is to be the final law of the International Prize Court—though they are thus left with a pretty clear indication that no laborious examination and weighing of circumstances is needed, that circumstances are of no great account, and that a slapdash hard and fast rule or presumption is to be the guide. If, as has often happened, a ship is found manned by an enemy crew and master, and employed in enemy trade, yet held entitled to fly a neutral flag, then of neutral character she will be held in spite of all. And the same with goods with an "owner"—whatever that may mean—"of a neutral nationality"—whatever that may mean, or whether it means anything or nothing. Well may M. Renault, the French reporter, say "the rules are not complete, some important points having been forced to be left aside"; and as well may he add, "Article 58 only resolves the simplest portion of the problem: it is the character, neutral

or enemy, of the owner which determines the character of the goods; but what is to be relied upon to determine the character, neutral or enemy, of the owner? We do not say, because it has been impossible to arrive at an understanding on this point." And thus it was left, in the air, but in a current blowing it away from the 'region of facts towards the region of hard and fast rules and presumptions. It transpires that there was an "equal division of votes in the committee of the conference," between this hard and fast rule of domicile and the hard and fast rule of nationality. What found no friends was the traditional and only reasonable way of taking all the facts into account. So that, here too, the sound British method was abandoned.

11. The instructions lay down in a final paragraph the guiding principles or notions to be followed by the British delegates, thus:—

"You will ever bear in mind that the British Empire, like every other state, has, *when neutral*, everything to gain from an impartial and effective international jurisdiction in matters of prize, *such as it is the purpose* of the forthcoming conference to establish on a sure and solid foundation; and that if unhappily the Empire should be involved in war, it will not suffer if those legitimate rights of a belligerent state which have been proved in the past to be essential to the successful assertion of British sea power, and to the defence of British independence, are *preserved undiminished* and placed beyond rightful challenge. The *maintenance*

*of these belligerent rights in their integrity, and the widest possible freedom for neutrals in the unhindered navigation of the seas, are the principles that should remain before your eyes as the double object to be pursued."*

Stripped of its eloquent flesh and brought down to its bare bones, what does this mean?

1. It means that when Britain is neutral she will gain from the existence of an International Prize Court overriding and superseding her own Courts.

2. That, when at war, she will not lose *if* her ancient maritime rights are preserved undiminished.

3. And that, to maintain those rights *and* at the same time to maintain the widest possible freedom for neutrals, is the double object to be pursued.

As to which it is to be remarked :—

1. That Britain, whether neutral or belligerent, can only lose from the establishment of a court which ousts her own, and in which there will always be a majority against her.

2. That when at war she will lose, if her belligerent rights *are* diminished, that sea power which alone preserves her and her independence; that Britain alone and no other state is in this case; and that, being in this case, her sea power must not be trusted to an *if*.

3. And that the merest attention will show, as all history proves, that the maintenance of belligerent rights undiminished, and the grant of the widest possible freedom to neutrals are contradictory,



contrary, and mutually exclusive propositions ; that the maintenance of belligerent rights undiminished renders impossible the widest freedom for neutrals ; that the wider the freedom of the neutral the greater the diminution of belligerent rights ; that as one waxes the other must wane ; and that, in short, belligerent rights and neutral freedom are opposed to and mutually destructive each of the other, and can never be a common object nor even a double object.

All unawares, perhaps, the instructions recognise what they do not express, and even seem expressly to deny—that between belligerent rights and neutral freedom a choice must be made, and that either the neutral must be advanced at the cost of the belligerent or the belligerent at the cost of the neutral. And the whole trend and tendency of the instructions is to abandon the traditional British policy of insisting on belligerent rights against neutral freedom ; to accept and adopt instead an insistence on neutral freedom against belligerent rights ; and to inculcate throughout the surrender of any doctrine, principle, or practice, however sound, that might stand in the way of agreement.

Naturally enough, the effect of such instructions was to cause a surrender of almost everything that came into question. And here let it be noted that these instructions were not a surrender after a conflict and a defeat in which the champions of British rights had been worsted ; they were a volun-

teered, unforced, unprovoked surrender, lightly adopted, and wantonly volunteered before even so much as a summons had been made, much less a defeat suffered. No array of force was required, no persuasion was needed or waited for. It was all done freely and even enthusiastically, without need, pressure, or stress of any kind, and all completed before the conference had even met.

“Sackvilles alone anticipate defeat,  
And, ere they join the battle, sound retreat.”

But these instructions, when there was yet no sign of an enemy, instructed a flight and organised a rout.

## VI

### THE DECLARATION OF LONDON

ON the 4th December 1908, the conference opened at the London Foreign Office. The academic discussions which followed are enshrined in 400 pages of minutes, reports, and appendices, all reported, not in English, but in French alone. They were so long and so meticulous as to extort from M. Dumba, the Austrian delegate, "cries of the heart" of impatience, which, at the closing sitting of 26th February 1909, he sadly avowed, and only hushed in order to join in the universal chorus of congratulation and compliment which ended this remarkable conclave.

Unlike the Hague Convention of 1907 setting up the International Prize Court, the Declaration of London, setting forth the new law for the court, was on 26th February 1909 signed by six out of the ten states convened to draw it up. Four of the states, indeed (Japan, Russia, Spain, and Italy), although they signed the final protocol on the same day, did not then sign the Declaration. They had all signed it, however, by 25th May 1909.

The Declaration itself is such as Sir Edward Grey's instructions suggested and foreshadowed. So far as that could be done by such a document—as to which, more later—it surrenders some of the most important, and hitherto most highly cherished of British belligerent rights. So far as that can be done thus, it established in 1909 what in 1801 the King of England characterised in his speech from the throne as “a new code of maritime law inconsistent with the rights and hostile to the interests of this country.”

In every one of the ten principal instances already cited from the instructions—as well as in others—the rights of the naval belligerent were either “diminished” or even destroyed; and that more especially whenever and wherever these rights would enure to the greater advantage of the stronger naval power. Throughout the Declaration, at every turn, in every new change, as though of set purpose, the rights which experience has shown to be the essential buttresses of British sea-power are diminished, pared away, or wholly destroyed. Every innovation proposed, every change adopted, was to British disadvantage, not one to her advantage. And the cumulative effect of all—if once the Declaration be ratified and the Alien Court submitted to—must be for ever to impair British supremacy at sea, and to leave her fleets, however powerful, so fettered by these new paper rules of the ring as to be little more than a splendid but impotent mockery,

incapable of reducing an enemy to submission by their power, and only capable of bringing Great Britain into financial difficulties—perhaps even to financial disaster—by their cost.

Let us see how the Declaration carried out the instructions—leaving aside for the moment all but the ten instances already cited.

1. The bias to the side of the neutral and contrary to the side of the belligerent in time of war, and the desire to enlarge neutral licence and by so much to lessen belligerent rights—this recurs throughout. Manifest in all the long discussions, it is made flagrant from one end to the other of the Declaration. Such a bias and such a desire are natural enough in the representatives of powers every one of which would, in war, be inferior in naval power to Great Britain, every one of which would therefore in all probability lose to her the command of the sea; and to every one of whom it would consequently be essential to have its trade carried on for it and its supplies, whether commercial or contraband, provided for it by the neutrals. But the bias and the desire are as contrary to the interests of Great Britain as they are for the interests of the other powers. Yet, as the event had been prepared, so it turned out. As the British instructions set out for, so the British delegates finally arrived at, a surrender all round. But even these delegates, when they had reached the goal, were themselves altogether uncertain as

to the real nature and effect of what they had done. "The end," say they very truly,—

"The end which H.M. Government had in view in calling a naval conference has been practically realised so far as concerns the general obligatory character of the rules laid down."

But whether they are rules which conform to the true law of nations, to right or to fair dealing, whether they have a good claim either to validity or respect, and whether, above all, they safeguard the rights and interests of Great Britain, the delegates altogether doubt. They even express their doubts in a passage coming as near to a condemnation of their own instructions as any delegates ever penned. Here it is:—

"To what extent the rules themselves will safeguard the legitimate rights and interests of Great Britain, and how far their claim to general validity and therefore to general respect is made good by their inherent justice, and by their conformity with the true law of nations, of which, according to the view always upheld by this country, it is an essential feature that it should flow from the recognition of the principles of right and of fair dealing common to all civilised peoples, *are questions which we must leave to the judgment of His Majesty's Government.*"

As to which it must be added that, not to the judgment of His Majesty's Government, but to the judgment of that sole and only sovereign authority in Great Britain—to the judgment of

Parliament itself, should they and must they be finally brought.

2. Contraband trade by neutrals with belligerents received in the Declaration all that sympathetic consideration which the instructions had prescribed.

Article 40 declares that "a vessel carrying contraband may be condemned *if* the contraband, reckoned either by value, weight, volume, or freight, forms more than half the cargo,"—which is only to say in other words that she may *not* be condemned if it forms less than half. As to this, M. Renault, the reporter, naïvely says "this may appear severe," as though it were severe on the neutral contraband-carrier; whereas the severity is on the belligerent, whose power of penalising and of thereby hindering contraband trade is thus limited. The only purpose of the Article is to free the trafficker in contraband from the penalty attached to the traffic. There is no other meaning or principle in it. One ship is to be condemned for carrying 100 tons of arms and ammunition because she carries less than 200 tons of cargo in all; another is not to be condemned for carrying 1000 tons of the same only because she carries more than 2000 tons in all. The greater the ship, the more contraband may she carry without risk of condemnation—which is as though a five-foot burglar should be condemned for carrying a two-foot knife, while a six-foot burglar is accounted innocent unless his knife is

longer than three feet. "You may carry contraband with impunity," says the Article, "but you really must not overdo it—especially if you are a small ship." Thus Lafontaine:—

"Faut de la vertu ; pas trop n'en faut :  
L'excès en tout est un défaut."

And so *faut de la contrebande ; pas trop n'en faut*. Never was reason, principle, or equity more flagrantly abandoned in order to cover with immunity the neutral provider of means of destruction, and in order thereby to give an advantage in war to that weaker of the two belligerents to whom alone such providers are essential.

Article 32 throws wide open and sanctions to "a vessel carrying absolute contraband" the further means of escape, always hitherto practised wholesale in all wars, of false papers made out for a false destination. For it declares that "*her papers are conclusive proof* as to the voyage on which she is engaged, unless she is found clearly out of the course indicated by her papers *and* unable to give adequate reasons to justify such deviation"—two conditions which the captain of a ship provided with false papers would be very simple if he could not comply with. •

Article 35 goes still further, and does for the contraband cargo what Article 32 does for the contraband-carrier. Here, too, it is declared that "the ship's papers are conclusive proof, *both as to*



*the voyage on which the vessel is engaged and as to the port of discharge of the goods, unless she is found clearly out of the course indicated by her papers, and unable to give adequate reasons to justify such deviation."*

Every seaman knows that the course to an innocent and the course to a guilty destination are constantly identical for a great part of the voyage. Thus the *Doelwyck*, carrying false papers representing her to be bound for Bombay, but in reality bound for Jibouti—and full of contraband—was captured in the Red Sea, on a course common both to the pretended and to the real voyage. She was condemned by the Italian Prize Court at Rome. Yet in this case there was no "deviation" whatever, and under the Declaration of London she could not even have been called upon to give reasons, adequate or otherwise, for a deviation that had not occurred. Wherefore neither she nor her contraband cargo would have been "liable to capture" or to condemnation, so long as she was careful only to show in her false papers the "conclusive proof" of her innocent voyage and cargo.

These two articles invest the falsest of papers with a sacred character, and, if these papers and the ship's course are but discreetly handled, will leave the belligerent the helpless victim of frauds which in all wars have been of everyday occurrence—and which were indeed common enough even in the late Russo-Japanese War.

Articles 33 and 34 are all in the same spirit. "Conditional contraband" (or things capable of either warlike or peaceful use) is declared in Article 33 (in accordance with the now existing law) to be "liable to capture if it is shown to be destined for the use of the armed forces or of a Government department of the enemy state"; though, even so, it escapes if "the circumstances show that the goods cannot in fact be used for the purposes of the *war in progress*," however useful for wars in general or for any other war than this. But Article 34 only allows the "presumption" of the prohibited destination to exist either "if the goods are consigned to enemy authorities," to "a fortified place belonging to the enemy or other place serving as a base for the armed forces of the enemy," or else to a "trader [falsely translated 'contractor' in the English version] established in the enemy country who, as a matter of common knowledge, supplies articles of this kind to the enemy." If the goods are consigned (or rather addressed, the French binding text having *adresse*) otherwise than to one of the destinations enumerated, then away goes the presumption; and then the very contrary presumption is set up and "the destination is presumed to be innocent." Still more innocent must have been those British delegates who, with all the frauds before them that were exposed by Lord Stowell, could accept this. The article is but a manual of instructions for the

use of the trafficker in conditional contraband, desirous to carry foodstuffs, forage, clothing, vehicles, vessels, coal, railway material or such like to the armed forces of a belligerent who is prevented by the superior naval power of his enemy from carrying them for himself. It informs him that if he will only "address" such things, neither to enemy authorities nor to a fortified place, nor to a base for armed force, nor to a trader who as a matter of common knowledge supplies articles of this kind to the enemy—that, if he will only refrain from such addresses as these, and will address his goods to some other place or person, then "the destination is presumed to be innocent," and the goods, the venture, and himself likewise innocent. The exact, sufficient method of fabricating false papers and false addresses, and the dangers that are to be avoided in their fabrication, cannot be more precisely set forth; and he will be a foolish person indeed who does not successfully practise the art. It is an art which will be practised for the benefit of Britain's enemy alone, in order to cover that enemy's supplies with immunity from British cruisers. Britain herself, if predominant at sea in the struggle, will have no need for such operations. For her command of the sea will sufficiently protect the passage of any such supplies that she may need. And even if she be not so predominant, even then—so wide and so open are the avenues of access to the British Islands—

even then such supplies cannot be intercepted to any appreciable extent were all the navies of the world to be set to the task.

3. Contraband is, however, limited in itself by the declaration which expressly excludes from the contraband character, not only a whole category of specially named things, but everything else not named in two other categories.

Article 22 gives a list of "absolute contraband," Article 24 of "conditional contraband," and Articles 27, 28, and 29 of "articles which may not be declared contraband either absolute or conditional." Among those in the last list are "raw materials of the textile industries and yarns of the same," and "metallic ores"; while Article 30, adopting the principle of "continuous voyage" for absolute contraband alone, makes this liable to capture if destined to the enemy or his armed forces, "whether the carriage of the goods is direct, or entails trans-shipment or a subsequent carriage by land."

Now, the experience of war and the numerous decisions of Prize Courts show that what is contraband is incapable of being thus listed. It depends on the circumstances of time, place, and destination. What is contraband at one time and place is not so at another. The only true and sufficient way is to take all the circumstances into account. To make exclusive hard and fast lists, and to declare that nothing outside them shall ever at any time or place or under any circumstances

be contraband at all, is most unduly to tie the hands of the belligerent—especially of the stronger belligerent, and therefore most especially of Great Britain—in preventing such trade with the enemy as is contraband (or “against the law”) of nations. But there is more than that.

Articles 23 and 25 provide that anything “may be added to the list” either of absolute or of conditional contraband, “by declaration” of a belligerent power, made either in war or in peace. This is one of the most monstrous and abusive of all the monstrous and abusive features of the Declaration. For no authority to make such a Declaration is required, either from a National Prize Court or from the International Prize Court. A belligerent power is left at its own will to declare what it pleases to be contraband. M. Renault frankly observes that (*on a trouvé excessive*) “some thought excessive the power accorded to a state of adding to the list [of contraband] by virtue of its own simple declaration.” It was natural to think it. But M. Renault holds it sufficient to reply to such thinkers that if a power had the presumption to add to the list of absolute contraband, “things not exclusively used in war”—then—what then? Why, then: “She might draw upon herself diplomatic remonstrances (*réclamations*), since she would ignore an accepted rule!” Yes, indeed, she might; yet how much she might care for them is not suggested. He also says “there would be

an eventual appeal to the International Prize Court"—a very insufficient consolation, seeing that the declaration is to come into force the instant it is made. As to all which, a cynic might say "*merci du peu!*" and all which leaves it open to—nay, positively invites—any belligerent at any moment to declare contraband any mortal thing it may have at that moment either a desire or an opportunity to capture and confiscate. Such are the abuses that arise when it is sought to withdraw from the National Prize Courts, deciding not on hard and fast lists but by reference to all the circumstances, what is and what is not contraband. Great Britain always has desired and must still desire rather to extend than to limit the list of contraband, so far as her own Prize Courts would permit. But to extend it in this purely arbitrary fashion without law or warrant, to apply the extension instantly without any other check than the possibility of a diplomatic remonstrance or a distant final appeal to such a court as that of the Hague—this never entered the mind of the most reckless British extender of contraband. Never until this declaration was signed.

4. Convoy, as giving immunity from search or visit is treated by Articles 61 and 62. Article 61 declares that "neutral vessels under [their own] national convoy are exempt from search." The neutral vessels may be two coasting vessels under convoy of a battleship, or twenty Atlantic liners under convoy of a torpedo-destroyer—the rule is

the same in both cases. One or all of the convoyed vessels may be, in fact, engaged in attempting to break a blockade ; in carrying troops to the enemy ; it may be under the control of an enemy's agent ; it may be a neutral collier chartered by the enemy's fleet and full of coal for that fleet ; it may even be an enemy ship falsely pretending to be a neutral, and possibly destined to be later "transformed" into an enemy warship ; it may be actually engaged in giving hostile assistance in one way or other to the enemy. And the warship meeting the convoy may either have absolute information to this effect or may see manifest signs of it. All that matters not. The captain of the warship may not search, may not visit, may not ask a question or look at a paper. He may "communicate his suspicions" to the captain of the convoying ship ; but it is "for the commander of the convoy alone to investigate the matter," and to give a copy of his report thereon to the warship officer. With that, and with that alone, under whatever circumstances, the captain of the warship must remain satisfied. He must so remain even if the report discloses that one or all of the convoyed ships are admittedly full of "conditional contraband." Whether they are or are not destined to the armed forces of the enemy, is for the convoying captain to decide—for him alone, who is thus constituted a Prize Court in himself. If the captain of the belligerent warship, or if his Government, does not like it, why then, says M.

Renault sweetly and finally—"there can only be a protest by the officer of the cruiser," and, if anything else, the difficulty will be settled "by diplomatic methods." The door thus opened to wholesale frauds—not necessarily, though even that possibly (for such things have been) on the part of the convoying officer, but on the part of the convoyed—this is wide indeed. For it is impossible that an officer can know all the cargoes, all the papers, and all the intentions of his convoy, or be able personally to answer for all. It matters not. He cannot know and the cruiser must not inquire.

Here, again, it is manifest that all the gain of any fraud perpetrated will enure to the weaker belligerent, who may urgently need fraudulent neutral aid, and not to the stronger, who needs it not, since her own ships freely traverse the seas. Here again, then, all the mischief is done to the belligerent who is stronger on the seas, or, in every probable case, to Great Britain.

5. Blockade—what it is, what constitutes a breach of it, and what powers and remedies the blockader has against the blockade-breaker, have always been matters of the highest moment in all naval wars. In future wars they must be of greater importance than ever before they were. For, since the Declaration of Paris of 1856 deprived belligerents of the right to capture enemy goods in neutral ships, and since it is the weaker belligerent alone that will be forced so to



get its goods carried, while the stronger, being in command of the sea, need have no recourse to the neutral flag—since this was agreed to, the stronger belligerent can no longer effectually and over all the seas act upon the trade of the weaker as formerly it could. On the other hand, the weaker belligerent will be tempted to keep its fleets in port in order to avoid their probable destruction should they take the seas. Blockade, therefore, is the most effectual weapon now left to the stronger power; and its importance is increased in proportion to the importance of all the other weapons now withdrawn.

Blockade has in the past been grossly abused, and, to our shame be it confessed, by no Government more than by the British, which, in reply to Napoleon's outrageous decrees of Berlin and Milan, announced by Orders in Council an even more outrageous paper blockade of almost all Europe.

But infinitely more outrageous than this is the pretence set up in recent years of a right in peace to apply, by a stronger to a weaker—but never by a weaker to a stronger—power that forcible coercion, with all that belongs to it, which nothing but war can render justifiable, lawful or even conceivable. This is called “pacific blockade,” which is as great a contradiction in terms as would be “pacific war,” which inflicts upon the blockaded the miseries of war without giving them any of its rights, and than which no more monstrous, lawless, and unprincipled use of force can be imagined. Yet strangely

enough this wanton and unimaginable method for the coercion of the weak by the strong has failed to excite any remonstrance from the friends of peace and the enemies of war—as though they were as ready to excuse acts which war alone can justify when done in peace, as they are prompt to condemn similar acts when done in war. Again it must be confessed to our shame that England has been a great sinner in this respect.

Nevertheless, incredible as it may seem, neither the Hague Conference of 1907 nor the Declaration of London of 1909—both of them speaking with the voice of humanity and civilisation, justice, equity, and luminous stars; both of them dealing with blockade; the latter at least professing to set forth “the generally recognised rules of international law”; and both professing high regard for “pacific commerce”—neither of them gives any attention whatever to this most monstrous abuse, beyond the remark made by M. Renault, who reports that “it was not intended to touch in anything what is called *pacific blockade*.” So that, while the Declaration narrows, trammels, restricts, and ties up by the most minute regulations that blockade in war which is as lawful as justifiable, it leaves untouched in anything that blockade in peace which is as unlawful as it is unjustifiable. Which gives the measure at once of the humanity and the honesty of those who concurred in making the Declaration.

• Articles 1 to 21 of this Declaration are con-

cerned with the regulations in question. All that is new in them is restrictive of the blockader and enlarging of the opportunities for blockade-breaking.

Article 2 declares (and declares be it observed in principle, most properly, in order to leave no room for fictitious or "paper" blockades) that "a blockade, in order to be binding, must be effective—that is to say, it must be maintained by a force sufficient really to prevent access to the enemy coast line"—which, of course, means not the whole coast line but that part thereof which is blockaded.

Article 17 declares that :—

"Neutral vessels may not be captured for breach of blockade, except *within the area of operations* of the warships detailed to render the blockade effective."

What now is this new "area of operations" without which no capture may be made? It is not, as might be supposed, the area in which each ship, having regard to her coal capacity, can operate, still less the aggregate of the areas in which all of the ships can operate. It is defined as "the aggregate of the zones of watching and blocking [*"surveillance"*] of all the blocking ships so organised as that the blockade is effective." Now the blockade must remain "effective." If for any other cause than stress of weather—the sole case of *force majeure* which can be alleged (and which is recognised in Article 4)—it ceases to be "effective," then it is "considered raised" and at an end.

The consequence of this is, under Article 17, considerable. Say that at least twenty ships, possibly of various kinds, are needed to make effective the blockade of a given port. If, in the absence of stress of weather, the blockading force is diminished by one of the ships, the blockade ceases to be effective, the other nineteen being, on the hypothesis, insufficient; and the blockade is raised. Consequently no such ship in such circumstances may chase a blockade-breaker anywhere beyond "the aggregate of the zones of surveillance" (whatever that may be) of the blockading force. For if she does she raises the blockade she is engaged in maintaining. The dilemma is ingenious. It is to say, "either you must leave the blockade-breaker unpursued except within the zone of your blockading vigilance, and must thus possibly leave her to break the blockade either then or later; or else you must yourself raise the blockade by the withdrawal which makes it cease to be effective." Whereby Article 17 adds a wholly new, purely notional, and altogether artificial restriction upon the blockading force and consequently upon blockade itself.

But, it may be objected, if twenty ships are needed to maintain the blockade effective, a prudent blockader will always have a few more to spare for the chase of the blockade-breaker. By detaching one of those few he would still maintain his effective blockade, even though the chase were continued beyond "the aggregate of the zones."

That is true. But even so the mischief of Article 17 is not ended. For beyond this magic zone no blockade breaker may be captured at all by any one of his vessels. Herein, quite apart from the possible dilemma, lies the new restriction on the blockader. Once outside the zone, the blockade breaker may snap her fingers at him. So may twenty or a hundred blockade-breakers, all waiting for a chance which sooner or later they will probably get of slipping into the blockaded port. Such a rule makes the capture or even the frightening off of blockade-breakers infinitely more difficult. How difficult it is even under the existing law and practice of unlimited chase to any distance, those know who have any knowledge of what happened in the blockade of the confederate ports during the American Civil War.

The law of nations, as declared consistently by British Prize Courts, is that a blockade-breaker may, so long as the blockade lasts, be pursued and captured at any time during and up to the conclusion of her voyage. How much more restrictive is the rule of Article 17 is obvious. And, as throughout, the new restriction is, for the reasons already stated, a restriction on the stronger of the belligerents and therefore principally, if not exclusively, on Great Britain.

6. Destruction of captured neutral merchant ships, or even of ships of doubtful character, without trial or judgment was always forbidden by the law of nations; and, in case such a ship

could not be brought or sent in for trial and judgment, her release was always required under penalty of full compensation by the captor. The rule was as manifestly just as it was merciful and considerate to the defenceless merchantman, and therefore eminently favourable to commerce. Yet this Declaration, affecting though it does throughout an especial respect for commerce, an especial purpose to relieve it from the incidents of war, and asserting as it does in its own preamble that it is intended among other purposes for the "advantages" of "pacific commerce"—yet this Declaration, by Articles 48 and 49, sweeps away all need for trial and judgment, or sending in to port that these may be held and given. It abrogates both the prohibition to destroy and the injunction to release—and leaves the captor free to destroy at his will the defenceless, untried merchantman; subject indeed to the illusory and mocking conditions that either to send his capture into port or to release her would "involve danger to the safety of the (his own) warship or to the success of the operation in which she is engaged at the time," and that he must "establish that he only acted in the face of an exceptional necessity of the nature contemplated in Article 49."

In any case an authorisation to destroy under some conditions is wholly different from and contrary to a prohibition from destroying under any conditions. But the conditions attached to the

authorisation are no safeguards at all. "Danger to the safety" of his ship may mean, and in the case of the weaker belligerent would mean, that if instead of destroying he released the ship, she might and probably would inform an enemy ship of war of his whereabouts, and thus bring upon him the danger (which, being only fit to deal with unarmed traders, he desires to avoid) of a naval action. "Danger to the success of the operations" in which his ship is engaged is, even wider. For those operations might be no other than the operations of sinking defenceless merchantmen without trial or judgment. He alone is to judge of that on the spot and at the moment; and it may be well worth while to accept the risk of subsequent, far-distant, possible failure to establish the exceptional necessity for the sake of the immediate harm done to the enemy.

But, however this may be, it is amazing that in the name of humanity, civilisation, justice, equity, and luminous stars a captor should be authorised to sink, burn, and destroy untried, uncondemned, and perhaps wholly innocent merchantmen, whenever it is in any way risky to his ship or inconvenient to his purposes to release her.

7. Hostile assistance to the enemy by neutrals (clumsily translated in the English version as "unneutral service") embraces the carriage of enemy despatches. This despatch-carrying is, it would seem, assumed to be sufficiently dealt with by the Convention No. 11, "signed without any

reservations" in 1907 by the British delegates—which convention, as already remarked, makes postal correspondence, whether of neutrals or belligerents, and whether in a neutral or an enemy ship, "inviolable" by a commander at sea, while leaving it violable by a commander on land. Articles 45, 46, and 47 of the Declaration, conceivably for this reason, make no mention of postal correspondence or of despatches. Article 46, however, enlightens and defines this Convention No. 11 by declaring that "a neutral vessel will be condemned if"—and therefore, in this respect only if—"she is exclusively engaged at the time . . . in the transmission of intelligence [the word in the binding French text is *nouvelles*, which is much narrower in signification than "intelligence," for intelligence may be either new or old, but *nouvelles* must be new if not indeed "news"] in the interest of the enemy." Thus enemy despatches in either a neutral or an enemy ship, made up as postal correspondence, are inviolable; and as to the neutral, he may with immunity carry either despatches or commissions, or any other documents in the interests of the enemy, provided only that he is not at that time "exclusively" engaged in doing him that service—as if, for instance, he is engaged in doing him another service in addition thereto.

So too as to the transportation of enemy troops, the neutral, under Article 45, goes free unless he is "on a voyage *specially* undertaken with a view



to the transport of individual passengers who are *embodied* in the armed forces of the enemy." Both conditions must be present. If the individuals are not "embodied" he may transport them even on a voyage specially undertaken with that view. Or even if the individuals are embodied, then he may transport them if only he is not on a voyage specially taken with that purpose. Nay, he may go further. He may "transport a military detachment of the enemy, or one or more persons who in the course of the voyage directly assist the operations of the enemy," provided that this is not done "to the knowledge of either the owner, the charterer, or the master"; a provision with which the merest tyro in neutral frauds can comply. An owner, charterer, or master, who left about any proof of such knowledge to be used against him by his captor, would have to "bear up for the church"; nor would any such proof in such circumstances ever be forthcoming unless by accident.

This is in the same spirit as is found throughout the Declaration—the spirit which has led its foreign advocates and its British victims to treat all neutral interference with the war as a justifiable and excusable act, and to protect it from all penalty. Yet those most imbued by this spirit must admit that in this instance it has carried them so far as to reach the limits of absurdity.

Here once again it is to be observed that all this is only for the sea, and that on the land the belligerent is still the spoilt child of the most

respectable advocates of trammels for the belligerent at sea.

8. Transfer of an enemy vessel to a neutral flag—lawful enough in itself when real and made in good faith—is as manifestly unlawful when false, or made for the purpose of cheating the belligerent into the belief that the ship is a neutral entitled to neutral treatment, though in fact she is an enemy and only entitled to enemy treatment. The question always is whether the alleged transfer was or was not honestly made. And since, if it was dishonestly made or not made at all but only pretended, all the persons concerned would assuredly have taken every precaution unscrupulous contrivance could suggest to conceal their fraud; and since the difficulty of proving the fraud is thus greatly increased, no obstacles whatever can equitably be put in the way of the belligerent on whom, be it remembered, the task of proof is imposed. All the circumstances should be open to his investigation and comment—which indeed have often overthrown what at first sight appeared the most honest cases of real transfer, and have shown them to be dishonest and unreal. Manifestly the only possibility of doing this is to be allowed unfettered investigation, and unrestricted production and comment on all the circumstances such an investigation has unearthed.

Instead of leaving cases of a kind so delicate, so differing, and so infinitely varying, to that full consideration and weighing of all the circumstances which alone suffices, Articles 55 and 56 pile up

foregone "presumptions," which decide the case upon arbitrarily chosen facts before all the circumstances can be even so much as alleged. Thus, by Article 55, "where the transfer was effected more than thirty days before the outbreak of hostilities, there is an *absolute presumption* that it is valid, if it is *unconditional, complete*, and in *conformity with the laws of the countries concerned*, and if its *effect* is such that neither the control of nor the profits arising from the employment of the vessel remain in the same hands as before the transfer." In other words, however suspicious the circumstances may be, however strong the circumstantial evidence against the ship alleged to have been transferred, she is absolutely presumed innocent, unless the captor (on whom lies the burden of proof), with his hands full of circumstantial evidence sufficient to hang a score of men, is able to add thereto conclusive proof that the transfer was either not unconditional, or complete, or in conformity with the law of the two foreign countries concerned, or of the effect described. Nay, there is more. He must also (Article 55) prove "that such transfer was made in order to evade the consequences to which an enemy vessel, as such, is exposed." Otherwise, the "transfer is valid"; even if only made within, not thirty days, but three hours before the outbreak of hostilities. Here, however, comes in another presumption (not an absolute presumption this time, but one "that may be rebutted")—that "if the bill of sale is not

on board," and if the transfer took place "less than sixty days before the outbreak of hostilities" (for here it is not thirty but sixty days), then there is "a presumption that the transfer is void." It is right to say, however, that this system of presumptions is as unfair to the captured as to the captor. For Article 56 declares that "there is an absolute presumption that a transfer is void" when made after the outbreak of hostilities; "if made during a voyage or in a blockaded port"; or "if a right to repurchase is reserved"; or "if the requirements of the municipal law governing the right to fly the flag under which the vessel is sailing have not been fulfilled." And here the burden of proof is put, not upon the captor, but upon the captured. Such a fencing off with presumptions, contrary presumptions, and conditional presumptions, of the facts and circumstances, which may conceivably be essential to establish the veritable character of the case, is ingenious. But it is calculated to prevent rather than to assist the discovery of the truth.

9. Transformation of merchantmen into men-of-war, or of men-of-war into merchantmen, effected by a belligerent outside its own jurisdiction on the high seas, is not dealt with by the Declaration of London of 1909. There is no article of the Declaration dealing with it.

Yet this question imperatively demanded decision. The ten powers were met together, in order—as the preamble to the Declaration puts it

—“to arrive at an agreement as to what are the generally recognised rules of international law,” to extend to neutrals and belligerents alike “all the advantages which an agreement as to the said rules would in the unfortunate event of a naval war present”; and “having regard to the divergence” of rules and practice together, “to insure henceforth a greater measure of uniformity” in this respect.

This question demanded decision not alone upon these grounds, but also because upon its decision there depended the fate of one of the two essential articles of the Declaration of Paris, 1856, which many of the delegates professed to regard as a sacred and inalterable portion of the law of nations. For the Declaration of Paris abolished privateering, in return for the abolition of the right to capture enemy goods in neutral ships. Transformation, while leaving that right of capture abolished, would not only restore privateering, but would render it infinitely more easy to practise; and would thus leave Great Britain under all the disadvantages of the Paris Declaration, while depriving her of the consideration given for them.

The question was in fact decided by a majority of seven to three of the declaring states—and decided against transformation. Of the ten states, only Germany, Russia, and France were for it, according to Baron Taube, the Russian delegate, who avows that “the point of view of these three powers represents, it appears, the opinion of the minority of the conference.” On other points

the minority had withdrawn or come to a compromise. But on this the minority stood fast against all agreement. Wherefore M. Renault reported that, both as to transformation and retransformation, the questions "remain entire," wholly undecided, and to be decided presumably by the different Prize Courts of different states in different ways; those of Germany, Russia, and France deciding that transformation is, and those of Great Britain, the United States, Japan, Italy, Austria, Holland, and Spain deciding that it is not, lawful. The "greater measure of uniformity" is here singularly absent, and the International Prize Court is left to apply its own notions of justice and equity.

10. Enemy property—how determined as such—is a question dealt with at the London Conference by a special sub-commission of five (*viz.*, Germany, Mr Göppert; France, M. Fromageot—who was the reporter; Great Britain, Mr Hurst; Italy, Mr Ricci-Busatti; and Russia, Baron Nolde)—on which committee, it will be noticed, the three states which had declared in favour of transformation at will were each represented by one delegate, while the seven states which had declared against it were only represented by two, all told, for the seven.

The natural rule as to enemy property is obviously that the character of the property is the character of its owner. And that is the rule of the law of nations, whether for property in ships

or in goods, as declared by British Prize Courts, whose criterion for the character of the owner is his domicile, his habitation, the scene of his activities, the abiding place of his material interests and business—whatever may be the much more indefinite and much less easily established character represented by that word “nationality,” which, in these days especially, has almost ceased to have any strict meaning. Strong advocates indeed were found for nationality as against and instead of domicile; and it would have seemed as if, of necessity, a choice must be made between the two. For property in a ship differs in no essential respect from property in goods; and whatever criterion there is for the one must be equally good for the other.

But the ingenious gentlemen of the committee, “after having ascertained that the opinions resulting from the practice followed up to now by the powers represented at the conference were equally divided,” finally adopted one rule for ships and another for goods, by “consecrating the rule of nationality there where it appeared wise, and the rule of domicile there where this rule presented advantages.”

Article 57 therefore declares “the neutral or enemy character of the vessel is determined by the *flag* which she is entitled to fly”; by which, as is carefully explained in the report thereon, is meant, that the nationality alone of the ship is to be considered, and neither the nationality nor the

domicile of the owner. "Wherefore," says the report, "it is necessary (*convient-il*) to attach oneself exclusively to it (the nationality), and to set aside what belongs to the personality of the owner." Thus for a ship the nationality is everything: the owner nothing. But, touching goods, Article 58 declares that "the neutral or enemy character of goods found on board an enemy vessel is determined by the neutral or enemy character of the owner." In the end, the criterion of domicile for determining the character of the owner, which had been introduced as a proviso to Article 58, was rejected altogether; the very word "domicile" completely disappeared from the article; and the result of the so-called compromise whereby nationality was to be the criterion for ships and domicile for goods was this:—That whereas in the one article nationality was retained and made the sole and exclusive criterion, yet in the second, domicile disappeared altogether, and was no more heard of. For "unanimity could not be obtained" for even the most modest mention of domicile in the second article, while it, apparently was obtained for the absolute and exclusive setting up of nationality in the first article. And so the false principle was adopted, while the true principle was rejected, even from so much as an allusion.

As this is left, what determines the character of the ship we know exactly—it is not domicile, it is "nationality." What determines the character of the goods we do not know at all; for that turns on



the character of the owner, and whether this is to be determined by domicile, by nationality, or by something else, we are not told. "Article 58," says the reporter, "only resolves the simplest part of the problem; it is the neutral or enemy character of the owner which determines the character of the goods, but what is to determine the neutral or enemy character of the owner? It is not said, because it was impossible to arrive at an agreement on this point." In which there is a touch of humour.

Thus the very central point of all, the point which, left unsettled, not only leaves unsettled the Declaration of London, but also unsettles the Declaration of Paris wherever that allows the confiscation of enemy, but not of neutral, property; this point is left wholly undetermined. That, when it comes, if ever, to the Hague International Prize Court, it will be determined against Great Britain, admits of no reasonable doubt. Meantime, wherever in the Declaration (as, for instance, in Article 60) the term "enemy goods" appears, it has no meaning whatever attached to it, but only a false meaning hinted at.

The examination under the preceding ten heads of ten of the leading subjects dealt with by the Declaration of London, does not cover the whole ground. It may be thought too detailed; yet even so, there are many details of importance, and interest that have been left aside. Such as it is, it may suffice to show that the amiable invitation

extended by the British instructions to the other powers to alter the laws of war to their own advantage and the disadvantage of Great Britain, was taken advantage of to the full ; and that in all important respects, and wherever important alterations were made by the Declaration, they were made to the injury of Great Britain, and to the lessening of her naval power in war, while land power in war was left unaffected or was even enlarged.

## VII

### THE NEW PROPOSALS—THE NAVAL PRIZE BILL •

WE are now asked to change the law of the sea—to brand as partial and incompetent our most respectable Prize Courts; to deprive them of their authority; and to subject all their decisions to appeal before another brand-new court invented for the purpose. We are asked to abandon and renounce the body of law built up on their decisions, and to substitute for that another brand-new law specially invented for the new court in the recesses of foreign offices. And to crown all, we are informed that a British Foreign Secretary has, in fact, already agreed on behalf of Great Britain to the erection of this new court, and has agreed on her behalf to take henceforth as the law of nations the new inventions contrived by the astute chancelleries of Europe, and adopted with incredible levity and incaution by the docile Foreign Office of Great Britain.

The changes proposed are embodied in two amazing documents—first the Hague Convention of

1907 setting up the new court; and secondly the Declaration of London of 1909, which affects to declare a new law of nations. Neither of these documents has yet been submitted for approval and ratification to the British Parliament. Neither represents, so far, more than the personal acts of a minister—acts done secretly without the previous knowledge of Parliament, and done, so far as appears, without either the previous knowledge or any concurrence of His Majesty the King. Yet these are acts which would complete the surrender—carried so far by the Declaration of Paris of 1856—of Britain's maritime rights, would deprive her of every rag of naval power in war left by that Declaration, would strike her Navy with final impotency and paralysis, and would leave her incapable of an effectually offensive naval action, and reduced for the protection of her existence to a straitened defensive against actual invasion.

None of all this, be it repeated, has yet received the sanction of Parliament, nor, so far as is known, of the Sovereign. None of it can be binding on Great Britain unless it receives the sanction of both.

This sanction it is proposed to obtain by a side wind. There is to be a parliamentary proceeding indirectly involving it, in the shape of the Naval Prize Bill, introduced 23rd June 1910, and standing on the order book of the House of Commons for second reading in the resumed sessional sittings of next November.

This Bill is presented by Sir Edward Grey. That is perhaps natural. It is supported by Mr Attorney-General and Mr Solicitor-General. That perhaps is inevitable, though it is possible, nay probable, that neither one of them was ever consulted, before the vast changes in the law of nations were agreed to which would result from its enactment. But what is most remarkable and most ominous is that it is also supported and endorsed by Mr McKenna, the present First Lord of the Admiralty. For, in this, Mr McKenna represents and speaks for all his fellow-commissioners for executing the office of Lord High Admiral known as the Board of Admiralty. He represents the four Sea Lords his colleagues, including that First Sea Lord who, according to the order of 20th October 1904, has for his business "all large questions of Naval Policy and Maritime Warfare to advise," and who, "in any matter of great importance is always to be consulted by the other Sea Lords, the Civil Lord, and the Parliamentary or Permanent Secretary." Whether the present First Sea Lord and the other Sea Lords have been consulted upon, and have agreed to, this Bill, with all it imports, must remain doubtful until we have their own testimony to the fact. Without that testimony it can scarce be credited. For while it is conceivable that civilians might agree to the trammels it puts upon the action of our fleet, it is not conceivable that admirals and seamen should so do. If they have really so

done, they have incurred towards their fellow-seamen and their country's fleet a responsibility grave indeed.

The Bill professes to set forth in a schedule the Hague Convention itself. The convention, however, as thus set forth, displays splendid contempt for material facts. There is no date to it. There is no indication that it was ever agreed to by any powers whatever. Much less is there any statement showing what powers, if any, have agreed to it. Nor is there anything to show who, if anybody, signed it, or whether anybody ever signed it at all. For aught that is to be discovered from this schedule, the convention might be one made in bygone ages between the kingdom of Barataria and the Republic of Utopia.

But the Bill itself is even more remarkable than its schedule. It is an old and very proper Prize Bill, first introduced in 1900, and which, after passing the House of Lords, only finally failed to pass the Commons in 1902 because, while it dealt with naval prize, it did not deal with the related subject of land booty. This humdrum old Bill has been, after eight years' repose, disinterred, hacked about, and made into an instrument of revolution. Into it there has been introduced a new "Part III." of seven clauses, giving a right of appeal from British Prize Courts to the proposed International Prize Court set up by the Hague Convention, and also giving to His Majesty the King power, by Order in Council, to make rules either for

transferring cases from British Prize Courts to the International Prize Court, or for regulating the manner of the appeals or transfers contemplated, and limiting the application of the seven clauses to such cases only as shall be directed by the King in Council. This is the new piece of cloth that has been patched into the old garment. It enacts an appeal from every British Prize Court, and also from the Judicial Committee of the Privy Council—the highest court in the British Empire—to the International Prize Court, leaving to the King in Council—which it is needless to say, means in fact to the ministry of the day—power to make rules applying to such appeals.

The tremendous change effected by the Part III. thus smuggled into an innocent Bill eight years old, is attempted to be explained and justified in what Bacon would certainly have called “a false, flattering preamble.” This preamble declares that “Whereas at the second Peace Conference held at the Hague in the year 1907, a convention the English translation whereof is set forth in the first schedule to this Act, was drawn up, but it is desirable that the same should *not* be ratified by His Majesty until such amendments have been made in the law relating to naval prize of war as will enable effect to be given to the convention”: therefore the Bill is to be enacted, which makes the enabling amendments for giving that effect to that convention. It will be observed that the Bill gives no direct sanction to the undated convention.

The preamble does not even affirm the desirability of giving ratification or sanction thereto. It only affirms the desirability of *not* giving any such ratification or sanction or any "effect" to the convention, before amendments have been made in the law. It leaves altogether aside the merits of the convention, and only touches the question of the order in which things should be done. It affirms that the law should first be altered before the convention is ratified. It does not expressly authorise the ratification, but it implicitly accepts any ratification that may be subsequently made. Its purpose is to make such "amendments" as will enable effect to be given to the convention; and accordingly Clause 25 of Part III. enacts an express sanction of the Hague Court and its law together; while Clause 28 makes the British High Court and the whole of the forces of the British Empire the mere instruments of the Hague Court, of its law, and of its decrees without any escape whatever. Part III., in short, swallows up the existing "law of nations" and existing Prize Courts, as Aaron's rod when it became a serpent swallowed up the rods of the magicians of Egypt. There is not a rod left—not a vestige of the authority of British Prize Courts. High Court and Judicial Committee of the Privy Council are swept away together, as is also the power to enforce the decisions of those courts and as is also indeed the law of nations itself. All is gone. All is handed over to a majority of one from Germany, Russia, Hayti,



S. Domingo, or Switzerland, deciding in secret on a Ukase which the British Empire and all its courts is made the instrument to enforce.

All this is put before Parliament as though it were a reasonable proposal.

If once this Bill with its false flattering preamble be passed, the convention would be as fully and effectually accepted, adopted, and sanctioned as if an express sanction were given to it by the Bill. In spite of the deceptive phraseology used in the preamble, in spite of the mask thus put over the whole, it is the fact that, when once this Bill, if ever, has been enacted, the foreign court will have been recognised, the convention creating it sanctioned by Parliament, the Declaration of London implicitly accepted, and the whole of the tremendous British interests and rights involved thereby placed at the mercy of the court created by the convention. At present the convention is but a project of manacles and fetters "drawn up" to be fitted to the British navy. Once this Bill passed, those manacles and fetters will be riveted upon it irremovably and for ever.

Nay, more. Once this Bill passed into an Act of Parliament, it will matter relatively little whether the Declaration of London which affects to invent and lay down the law to be applied by the new court—it will matter relatively little whether that Declaration be ratified or not. The surrenders made by the Declaration, of the law as it at present exists—and probably much more—will be enforced

by the International Court, whether made by the Declaration or not. For this court is to "apply the rules of international law"; and "if no generally recognised rule exists, the court shall give judgment in accordance with the general principles of justice and equity"—as understood and adopted in secret sitting, by a bare majority of fifteen judges, whereof one only will be British. Failing the Declaration of London<sup>2</sup>, these judges may—nay will, nay must—fall back on their own notions of law, of justice, and of equity, with full authority to enforce them against all the world. And wherever they cannot enforce them, the British Government will enforce them; for by Section 28 of the Part III. of the Bill, "the High Court and every Prize Court in a British possession *shall enforce within its jurisdiction all orders and decrees of the International Prize Courts* in appeals and cases transferred to the court under this part of the Act." Once this Bill passed, therefore, it will matter little whether the Declaration of London be sanctioned or not; for the International Court can always fall back upon the notions of justice and equity entertained by Germany, Austria, Servia, and Hayti. The only difference will be that, instead of an express renunciation by Great Britain of those portions of the existing law of nations which affirm and secure British maritime rights—instead of that express renunciation by the Declaration, the court will avail itself of the equally effectual implied renunciation made by the Bill.

This is not to say that the Declaration is of no importance. It is of the most tremendous importance. But—inasmuch as the International Court, once set up and accepted, can, under the powers given to it, act in accordance with or even go beyond the Declaration—inasmuch as this is so, the Bill which sets up the unbridled court is of far greater importance than the Declaration providing the court with a new law, which it can provide for itself without any Declaration. Or, to put it in another way: it were better to have the Declaration—false, mischievous, fatal as it is—sanctioned without setting up the foreign court to enforce it, than by acceptance of the convention, to set up the court with power to enforce either the Declaration or anything else that it chooses to consider “just and equitable.”

Moreover, the Bill accepting the convention is to come before Parliament first: the Declaration only second and incidentally if at all. The Bill is instant and pressing. The Bill includes the Declaration, or renders it obligatory. The Bill therefore is what, if anything, must be resisted. Without the Bill passed, the Declaration can hardly be ratified; nor could it in such a case amount to more than an unauthoritative, unauthorised, and unwarranted expression of Lord Desart's private opinion on certain points of the law of nations; an expression capable indeed of being used against us with much effect in controversy, but yet not fastened about our necks for ever by our own act.

To destroy the law of nations, to renounce essential British maritime rights; to make an end of the final authority of all British Prize Courts, as well as of the King in Council; to submit all to the decision of a foreign tribunal; and to bind Great Britain to enforce every rule and order of that tribunal, is a task no ministry ever before essayed. Still less has it ever been essayed by these indirect methods.

When, as in this case, it is proposed to subject the whole sea power of the State to new conditions and restrictions enforced by new methods, and to bring the whole State thereby into peril—then, if ever, that Parliament in which there resides the sole sovereign power should first be called upon to pronounce directly for or against the proposals made.

As it is right of Parliament to require, so it is the duty of ministers to offer, the submission to parliamentary judgment of every one of the instruments embodying the proposals.

Yet neither the Hague Convention establishing the International Prize Court, nor any of the other numerous conventions there signed as on behalf of Great Britain, nor the Declaration of London, has been so submitted.

Instead of this, Parliament is to be asked to cover all by the indirect method of passing a Bill giving an implied consent and sanction to instruments never submitted to it for direct acceptance or rejection.

Were Parliament to accept so tortuous—and it may be added so contemptuous—a procedure, it would fail in its duty to the nation.

And now comes the gravest consideration of all. It is that, so far as the sole executive action of a single minister of the crown can bind, Great Britain is already bound by all that is contained in this Declaration of London.

The full importance of this must be appreciated. To the Declaration containing that final, imperative, binding article, the signature is appended of Lord Desart, authorised to sign by the British Secretary of State for Foreign Affairs. If that signature suffices, Great Britain is at this moment bound to insure the observance of all the rules of the Declaration. She is at this moment bound to issue instructions to her naval commanders to do all that it ordains and to abstain from all that it prohibits, and to send her fleets to sea, manacled and shackled by herself, and deprived by her own instructions of all the powers withdrawn from it by the Declaration. She is bound, at this moment, to insure the application by her own courts, including that great court of the King in Council, of all the rules of the Declaration which destroy the final authority of those ancient and respectable tribunals. She is bound at this moment to submit every case of capture and prize, and every act of her shackled navy to the foreign court at the Hague.

If the signature given under these circum-

stances suffices to bind Great Britain, she is bound, if war broke out to-morrow, to go into the war under conditions which would paralyse her fleets, and subject her every action to the final judgment of a court with a permanent majority against her.

But does the signature suffice? Lord Desart himself, as well as his fellow-delegates, Admiral Ottley, Admiral Slade, Mr Crowe, and Mr Hurst, all believe that it does. In their common report of all done, dated 1st March 1909, when they offered up the sacrifice of their country's naval power wrapped in this Declaration, they leave no doubt as to their belief. Having paid a tribute to "M. Renault, the distinguished French plenipotentiary, whose unfailing tact, unrivalled knowledge, and wide experience materially contributed to the smooth progress of the discussions," they proceed to quote M. Renault's general report, which "explains how" Article 66 ends, concludes, binds, and clinches all. He explains, they say, and say with manifest acquiescence, that :—

"The provisions of the Declaration are in the first instance *binding upon all the signatory powers* in virtue of their express engagement under Article 66, to *give effect thereto in their National Prize Courts and in the instructions to their naval officers*. There is this further consequence, that the *international court will have authority to apply the rules generally, as being in conformity with the accepted principles of international law, quite apart from*

*the specific obligation* which the signatory powers undertake, to obey them in "their relations with each other."

Here, then, is the situation to which in the belief of the British delegates we have been brought. By a secret proceeding, carried on in the Foreign Office without the knowledge of anybody outside thereof, Great Britain, ever since the Declaration was signed, has been, and at this moment is, held by the foreign powers concerned, and by her own delegates, to be bound hard and fast by this Declaration; bound to submit to its enforcement by the International Court; bound herself to enforce it by all means in her power.

Let the thing done, or believed to be done, be fully realised. Without the knowledge either of Parliament or people, without, so far as anything is known, the sanction of the King, and certainly without the sanction of Parliament, an agreement has been made in the name of the country which sets aside many of the most important principles of the law of nations as declared by the ablest and most learned jurists, and which sets up in their place new doctrines, all or nearly all to the great lessening of British powers. All this, we are told, is to be enforced against herself by Great Britain, which is not only to instruct her naval officers to refrain in war from exercising her ancient maritime rights, but is also to insure that it shall also be applied by her own hitherto respectable and independent Prize Courts. Nay,

more, in case she hesitates or delays, the Hague International Prize Court, we are told (by our own delegates), "will have authority to apply the rules generally . . . quite apart from the specific obligation" under which these delegates believe they have laid their country. Whatever else happens, they tell us, that will happen. Parliament may refuse to sanction what has been done. The King may refuse to authorise the ratification of the Declaration. The British Prize Courts may refuse to condemn all their own previous decisions, to burn all their books and to set out on a new path not known to them or their predecessors in the seat of judgment. It matters not. Even in that case, even in any case whatever, the International Prize Court has already "authority to apply the rules," and will apply them, whoever and whatever may stand in the way. So vast, so essential an alteration of the conditions under which Great Britain is in future to fight for her rights, for her interests, for her position—it may be for her very existence—should only, could only, be constitutionally, lawfully, or safely made after counsel taken with that Parliament to which is committed the sovereign authority of the realm. Were Parliament, after full consideration of all the changes proposed, to accept them; were the King then—for only then could it be constitutionally and effectually done—to ratify them, then indeed the thing so done would be valid and binding. But that a single minister should pass by Parlia-



ment, should pass by the King, and should, without the previous assent duly and solemnly expressed of either, agree to such a change as this, and to the erection for its enforcement of such a court as this—that such a thing should be done passes all the bounds of ministerial presumption yet reached.

Blackstone, speaking of the law of nations says :—

“In arbitrary states this law, whenever it contradicts or is not provided for by the municipal law of the country, is enforced by the royal power ; but, since in England no royal power can introduce new law, or suspend the execution of the old, therefore the law of nations, whenever any question arises which is properly the object of its jurisdiction, is here adopted in its full extent by the common law, and held to be the law of the land.”

Whether the law of the land can be secretly and surreptitiously changed ; whether the sole ministerial power can effect both a suspension of the execution of the old and the introduction of a new law ; whether ministerial power can do that which even the royal power cannot effect—this is the question. If now, for the first time, all things can be done, or if, having been done, they are submitted to as done lawfully and effectually, then has Great Britain become an arbitrary state, wherein the arbitrary power is not even exercised by the Sovereign, but is usurped by the Minister.

But all is not yet over. There is a weak place in the engine for the destruction of British naval power, which the delegates think has been made so complete and effective. One thing they seem to have forgotten or overlooked. It is this: that at this present, so far as Great Britain is concerned, there is *no International Prize Court in existence*, and there will be none unless and until the Naval Prize Bill is enacted by Parliament. That is avowed and established by the preamble of the Bill itself, which recites that, although the convention of 1907 establishing the court was "drawn up" at the Hague, yet that is all that so far has happened to it; that, as regards Great Britain, it is "desirable" that this convention "should *not* be ratified by His Majesty, until such amendments have been made in the law relating to Naval Prize of war as will enable effect to be given to the convention"; such amendments, that is, as are proposed to be made by the Naval Prize Bill itself. Quite clearly, therefore, until that Bill is enacted, there can be no effect given, either by ratification or otherwise, to the 1907 Convention; and, consequently, no International Prize Court at all is so much as in existence, much less having authority to apply the rules, "apart from our specific obligations."

Here, then, we have a reply to some questions already asked. Lord Desart's signature alone is not sufficient. Standing alone, it binds us to nothing. Without the Naval Prize Bill it amounts

to nothing. Should Parliament refuse to pass that Bill, then the whole of the doings of both the two conferences of the Hague and of London, fall to pieces—all of them together, like a house of cards. The convention agreeing to the establishment of the court could not then be ratified by His Majesty, neither could the Declaration of London, in that case, be so ratified. To ratify a Declaration which expressly declares itself in its very first words to be made “within the meaning of” the convention establishing the International Prize Court, when the convention and the court it creates have been rejected—this would be inconceivable.

The Naval Prize Bill, then, is the king-pin and pivot of all. If that be passed into an Act, all the mischief is done. If not, then nothing is done.

The whole effort, therefore, of those who would still retain the maritime rights of Great Britain, and thereby ensure still to her that preponderance at sea which they have always given, must be to defeat the Naval Prize Bill. What matters—what, as things now stand, alone matters—is the Bill.

And now one last word.

Despite all fair words spoken, the deeds done during the last fifty years throughout the world from Denmark to Manchuria, show that we are no nearer to universal Peace but farther from it; that if Peace is cried more loudly, War

is more constantly and secretly prepared, and more suddenly sprung; that Ambition stalks the earth no less predatory than ever but only smother spoken; and that Force is but more completely cloaked in Fraud.

Any day we too, with little or ~~no~~ warning, may have to fight for our own.

In that day what alone will avail us will be our sea power and our maritime rights; what alone will check our enemy, their full exercise. As they sufficed before, even against all Europe, so they would still suffice. For nothing essential is changed.

In that day it will avail us nothing that we have the most powerful fleets, if by our own folly we have in advance suffered them to be protocolised and declared out of their effectual powers, and subjected to a foreign court.

Is that day so remote that we need now and henceforth think only of our neutral profits in Peace, and not at all of our risks, rights, and powers in War?

If so, why all these *Dreadnoughts*? Why this present concentration in the North Sea of British fleets recalled from all quarters of the globe? Why Rosyth? Why this sudden, feverish, ruinous race in armaments? Is it all for nothing?

Is that day so far off? Is it not rather, quite manifestly, believed by those who know most and are most responsible, to be near at hand?

If it be, then to part with any, even the least

portion, of that sea power whereon alone we can rely for our defence, would be to prepare our own ruin.

Not now. Not now. Not yet.

This is no time for putting off any of our harness—rather for girding it on.

This is no time to sign away our remaining sea powers, no time to entertain otherwise than with blunt refusal proposals to alter the law of the sea so as to lessen them, no time to submit their exercise to the mercies of an alien tribunal.

Rather is it time, by denouncing the Declaration of Paris, to resume those powers already waived.

## APPENDICES



## APPENDIX A

### COST OF CARRIAGE BY SEA AND LAND

“Speaking broadly, then, normal coal freights are now less than half what they were a generation ago, and there is little doubt, if we went back to 1850, we should find a far greater change. Now, if we assume the normal price of coal to have been 10s. per ton, free on board at both periods, the average reduction to the consumer may be taken to have been, roughly, from 30s. to 20s. per ton, or a reduction of about one-third. It is perhaps worthy of note that last year’s average freight (5s. 4d.) from Cardiff to Port Said (3072 miles) was below the cost of conveying coal by rail from South Wales (say the centre of the Rhondda Valley) to London (170 miles), Liverpool (175 miles), or Southampton (128 miles), which, reckoning wagon hire at 6d., was 6s. 1d., 5s. 10d., and 5s. 8d., respectively, and to which large quantities of coal are sent for bunkering liners. This works out, for land carriage by rail over the Great Western Railway, at about 0·40 per ton per mile, or 0·44 with wagon hire, as against a little over 0·02d. for water carriage to Port Said. In other words, the cost of conveyance per ton per mile by rail was about twenty times that by water, or, to put it in another way, 50 tons of coal were carried a mile by water for 1d. as against 2½ tons by rail, and say, 2 cwt. by horse and cart along a high road.—“The Growth and Direction of our Foreign Trade in Coal during the Last Half Century,” by D. A. Thomas, M.A., M.P. (Paper read before the Royal Statistical Society 19th May 1903.)

Put in yet another and perhaps even simpler way, what it amounts to is that :—

50 tons were carried one mile by sea for . . . . .	1d.
50 tons were carried one mile by rail for . . . . .	20d.
and 50 tons were carried by road with horse and cart for . . . . .	500d.



## APPENDIX B

### DECLARATION RESPECTING MARITIME LAW

*Signed by the Plenipotentiaries of Great Britain, Austria, France, Prussia, Russia, Sardinia, and Turkey assembled in Congress at Paris, 16th April 1856.*

#### DECLARATION

The plenipotentiaries who have signed the Treaty of Paris of 20th March 1856, met in conference.

##### CONSIDERING :

That maritime law in time of war has long been the object of regrettable contestation ;

That the uncertainty of the law and of duties in such a matter gives rise, between neutrals and belligerents, to divergences of opinion which may lead to serious difficulties and even to conflicts ;

That it is advantageous therefore to establish a uniform doctrine on a point so important ;

That the plenipotentiaries assembled at the Congress of Paris could not better fulfil the intention by which their governments are animated than by seeking to introduce into international relations fixed principles in this respect ;

Duly authorised, the above-mentioned plenipotentiaries have agreed to concert together on the means of attaining this end ; and having come to an agreement, have decided upon the solemn Declaration following :

1. Privateering is and remains abolished.
2. The neutral flag covers enemy's merchandise with the exception of contraband of war.
3. Neutral merchandise, with the exception of contraband of war, is not capturable under the enemy's flag.
4. Blockades, in order to be obligatory, must be effective—that is to say, maintained by a force sufficient to really prevent access to the coast of the enemy.

The governments of the plenipotentiaries undersigned engage themselves to bring this Declaration to the knowledge of the states, which have not been invited to participate in the Congress of Paris, and to invite them to accede to it.

Convinced that the maxims which they have now proclaimed can only be received with gratitude by the whole world, the undersigned plenipotentiaries do not doubt that the efforts of their governments to generalise their adoption will be crowned with full success.

The present Declaration is not and will not be obligatory, except between the powers who have or who shall have acceded to it.

Done at Paris the 16th April 1856.

[Follow the signatures.]

## APPENDIX C

### FINAL ACT OF THE SECOND PEACE CONFERENCE HELD AT THE HAGUE IN 1907, AND CONVEN- TIONS AND DECLARATION ANNEXED THERETO

[TRANSLATION.]

#### **Final Act of the Second International Peace Conference.**

The Second International Peace Conference, proposed in the first instance by the President of the United States of America, having been convoked, on the invitation of His Majesty the Emperor of All the Russias, by Her Majesty the Queen of the Netherlands, assembled on the 15th June, 1907, at The Hague, in the Hall of the Knights, for the purpose of giving a fresh development to the humanitarian principles which served as a basis for the work of the First Conference of 1899.

The following Powers took part in the Conference, and appointed the Delegates named below :—

[Here follow the Names.]

At a series of meetings, held from the 15th June to the 18th October, 1907, in which the above Delegates were throughout animated by the desire to realize, in the fullest possible measure, the generous views of the august initiator of the Conference and the intentions of their Governments, the Conference drew up, to be submitted to the Plenipotentiaries for signature, the text of the Conventions and of the Declaration enumerated below and annexed to the present Act :—

1. A Convention for the Pacific Settlement of International Disputes.
2. A Convention respecting the Limitation of the Employment of Force for the Recovery of Contract Debts.
3. A Convention relative to the Opening of Hostilities.
4. A Convention respecting the Laws and Customs of War on Land.
5. A Convention respecting the Rights and Duties of Neutral Powers and Persons in case of War on Land.

6. A Convention relative to the Status of Enemy Merchant-ships on the Outbreak of Hostilities.
7. A Convention relative to the Conversion of Merchant-ships into War-ships.
8. A Convention relative to the Laying of Automatic Submarine Contact Mines.
9. A Convention respecting Bombardment by Naval Forces in Time of War.
10. A Convention for the Adaptation to Naval War of the Principles of the Geneva Convention.
11. A Convention relative to certain Restrictions with regard to the Exercise of the Right of Capture in Naval War.
12. A Convention relative to the creation of an International Prize Court.
13. A Convention concerning the Rights and Duties of Neutral Powers in Naval War.
14. A Declaration prohibiting the Discharge of Projectiles and Explosives from Balloons.

The Conference, actuated by the spirit of mutual agreement and concession which inspire its deliberations, has agreed upon the following Declaration, which, while reserving to each of the Powers represented the benefit of the votes recorded, enables them to affirm the principles which they regard as unanimously admitted :—

It is unanimous—

1. In recognizing the principle of obligatory arbitration.
2. In declaring that certain disputes, in particular those relating to the interpretation and application of the provisions of International Agreements, may be submitted to obligatory arbitration without any restriction.

Finally, it is unanimous in proclaiming that, although it has not yet been found feasible to conclude a Convention in this sense, nevertheless the divergences of opinion which have come to light have not exceeded the bounds of controversy on legal questions, and that the Powers of the whole world, through their united labours here during the past four months, have not only learnt to understand one another and to draw closer together, but have succeeded in the course of their long collaboration in evolving a lofty conception of the common welfare of humanity.

The Conference has further unanimously adopted the following Resolution :—

The Second Peace Conference confirms the Resolution adopted by the Conference of 1899 in regard to the limitation of military expenditure; and inasmuch as military expenditure has considerably increased in almost every country since that time, the Conference declares that it is eminently desirable that the Governments should resume the serious examination of this question.

It has besides recorded the following wishes :—

1. The Conference recommends the Signatory Powers to adopt the annexed draft Convention for the creation of a Judicial Arbitration Court, and to bring it into force as soon as an agreement shall have been reached respecting the selection of the Judges and the constitution of the Court.
2. The Conference records the wish that, in case of war, the responsible authorities, civil as well as military, should make it their special duty to ensure and safeguard the maintenance of pacific relations, and particularly of the commercial and industrial relations between the inhabitants of the belligerent States and neutral countries.
3. The Conference records the wish that the Powers should regulate, by special Treaties, the position, as regards military charges, of foreigners residing within their territories.
4. The Conference records the wish that the preparation of regulations relative to the laws and customs of naval war should figure in the programme of the next Conference, and that in any case the Powers should apply, as far as possible, to war by sea the principles of the Convention relative to the Laws and Customs of War on land.

Finally, the Conference recommends to the Powers the assembly of a third Peace Conference, which might be held within a period corresponding to that which has elapsed since the preceding Conference, at a date to be fixed by common agreement between the Powers, and it calls their attention to the necessity of preparing the programme of this third Conference a sufficient time beforehand to ensure its deliberations being conducted with the necessary authority and expedition.

In order to attain this object the Conference considers that it would be very desirable that, some two years before the probable date of the meeting, a preparatory Committee should be charged by the Governments with the task of collecting the various proposals to be submitted to the Conference, of ascertaining what subjects are ripe for international regulation, and of preparing a programme upon which the Governments should decide in sufficient time to allow of careful examination in each country. This Committee should further be intrusted with the task of proposing a system of organisation and procedure for the Conference itself.

In faith whereof the Plenipotentiaries have signed the present Act and have affixed their seals thereto.

Done at The Hague, the 18th October, 1907, in a single original, which shall remain deposited in the archives of the Netherland Government, and of which duly certified copies shall be sent to all the Powers represented at the Conference.

[TRANSLATION.]

**No. 6.—Convention relative to the Status of Enemy Merchant-ships at the Outbreak of Hostilities.**

Anxious to ensure the security of international commerce against the surprises of war, and wishing, in accordance with modern practice, to protect as far as possible operations undertaken in good faith and in process of being carried out before the outbreak of hostilities, have resolved to conclude a Convention to this effect, and have appointed as their Plenipotentiaries, that is to say :

\* [Names of Plenipotentiaries.]

Who, after having deposited their full powers, found to be in good and due form, have agreed upon the following provisions :—

*Article 1.*—When a merchant-ship belonging to one of the belligerent Powers is at the commencement of hostilities in an enemy port, it is desirable that it should be allowed to depart freely, either immediately, or after a reasonable number of days of grace, and to proceed, after being furnished with a pass, direct to its port of destination or any other port indicated to it.

The same principle applies in the case of a ship which has left its last port of departure before the commencement of the war and has entered a port belonging to the enemy while still ignorant that hostilities had broken out.

*Article 2.*—A merchant-ship which, owing to circumstances beyond its control, may have been unable to leave the enemy port within the period contemplated in the preceding Article, or which was not allowed to leave, may not be confiscated.

The belligerent may merely detain it, on condition of restoring it after the war, without payment of compensation, or he may requisition it on condition of paying compensation.

*Article 3.*—Enemy merchant-ships which left their last port of departure before the commencement of the war, and are encountered on the high seas while still ignorant of the outbreak of hostilities, may not be confiscated. They are merely liable to be detained on condition that they are restored after the war without payment of compensation ; or to be requisitioned, or even destroyed, on payment of compensation, but in such case provision must be made for the safety of the persons on board as well as the preservation of the ship's papers.

After touching at a port in their own country or at a neutral port, such ships are subject to the laws and customs of naval war.

*Article 4.*—Enemy cargo on board the vessels referred to in Articles 1 and 2 is likewise liable to be detained and restored after

the war without payment of compensation, or to be requisitioned on payment of compensation, with or without the ship.

The same principle applies in the case of cargo on board the vessels referred to in Article 3.

*Article 5.*—The present Convention does not refer to merchant-ships which show by their build that they are intended for conversion into war-ships.

*Article 6.*—The provisions of the present Convention do not apply except between Contracting Powers, and then only if all the belligerents are parties to the Convention.

*Article 7.*—The present Convention shall be ratified as soon as possible.

The ratifications shall be deposited at The Hague.

The first deposit of ratifications shall be recorded in a Protocol signed by the Representatives of the Powers which take part therein and by the Netherland Minister for Foreign Affairs.

The subsequent deposits of ratifications shall be made by means of a written notification, addressed to the Netherland Government and accompanied by the instrument of ratification.

A duly certified copy of the Protocol relating to the first deposit of ratifications, of the notifications mentioned in the preceding paragraph, as well as of the instruments of ratification, shall be immediately sent by the Netherland Government, through the diplomatic channel, to the Powers invited to the Second Peace Conference, as well as to the other Powers which have acceded to the Convention. The said Government shall, in the cases contemplated in the preceding paragraph, inform them at the same time of the date on which it received the notification.

*Article 8.*—Non-Signatory Powers may accede to the present Convention.

A Power which desires to accede notifies its intention in writing to the Netherland Government, forwarding it the act of accession, which shall be deposited in the archives of the said Government.

The said Government shall immediately forward to all the other Powers a duly certified copy of the notification as well as of the act of accession, mentioning the date on which it received the notification.

*Article 9.*—The present Convention shall take effect, in the case of the Powers which were parties to the first deposit of ratifications, sixty days after the date of the Protocol recording such deposit, and, in the case of the Powers which shall ratify subsequently or which shall accede, sixty days after the notification of their ratification or of their accession has been received by the Netherland Government.

*Article 10.*—In the event of one of the Contracting Powers wishing to denounce the present Convention, the denunciation shall

be notified in writing to the Netherland Government, which shall immediately communicate a duly certified copy of the notification to all the other Powers, informing them of the date on which it was received.

The denunciation shall only operate in respect of the denouncing Power, and only on the expiry of one year after the notification has reached the Netherland Government.

*Article 11.*—A register kept by the Netherland Ministry for Foreign Affairs shall record the date of the deposit of ratifications effected in virtue of Article 7, paragraph 3 and 4, as well as the date on which the notifications of accession (Article 8, paragraph 2) or of denunciation (Article 10, paragraph 1) have been received.

Each Contracting Power is entitled to have access to this register and to be supplied with duly certified extracts from it.

In faith whereof the Plenipotentiaries have appended their signatures to the present Convention.

Done at The Hague, the 18th October, 1907, in a single original, which shall remain deposited in the archives of the Netherland Government, and of which duly certified copies shall be sent, through the diplomatic channel, to the Powers invited to the Second Peace Conference.

[TRANSLATION.]

### **No. 7.—Convention relative to the Conversion of Merchant-ships into War-ships.**

Whereas it is desirable, in view of the incorporation in time of war of merchant-ships in the fighting fleet, to define the conditions subject to which this operation may be effected ;

Whereas, however, the Contracting Powers have been unable to come to an agreement on the question whether the conversion of a merchant-ship into a war-ship may take place upon the high seas, it is understood that the question of the place where such conversion is effected remains outside the scope of this Agreement and is in no way affected by the following rules ; and

Whereas they are desirous of concluding a Convention to this effect, have appointed as their plenipotentiaries, that is to say :

[Names of plenipotentiaries.]

Who, after having deposited their full powers, found to be in good and due form, have agreed upon the following provisions :—

*Article 1.*—A merchant-ship converted into a war-ship cannot have the rights and duties appertaining to vessels having that status unless it is placed under the direct authority, immediate control, and responsibility of the Power, the flag of which it flies.



*Article 2.*—Merchant-ships converted into war-ships must bear the external marks which distinguish the war-ships of their nationality.

*Article 3.*—The commander must be in the service of the State and duly commissioned by the proper authorities. His name must figure on the list of the officers of the fighting fleet.

*Article 4.*—The crew must be subject to military discipline.

*Article 5.*—Every merchant-ship converted into a war-ship is bound to observe in its operations the laws and customs of war.

*Article 6.*—A belligerent who converts a merchant-ship into a war-ship must, as soon as possible, announce such conversion in the list of its war-ships.

*Article 7.*—The provisions of the present Convention do not apply except between Contracting Powers, and then only if all the belligerents are parties to the Convention.

*Article 8.*—The present Convention shall be ratified as soon as possible.

The ratifications shall be deposited at The Hague.

The first deposit of ratifications shall be recorded in a Protocol signed by the Representatives of the Powers which take part therein and by the Netherland Minister for Foreign Affairs.

The subsequent deposits of ratifications shall be made by means of a written notification, addressed to the Netherland Government and accompanied by the instrument of ratification.

A duly certified copy of the Protocol relating to the first deposit of ratifications, of the notifications mentioned in the preceding paragraph, and of the instruments of ratification, shall be immediately sent by the Netherland Government, through the diplomatic channel, to the Powers invited to the Second Peace Conference, as well as to the other Powers which have acceded to the Convention. The said Government shall, in the cases contemplated in the preceding paragraph, inform them at the same time of the date on which it received the notification.

*Article 9.*—Non-Signatory Powers may accede to the present Convention.

A power which desires to accede notifies its intention in writing to the Netherland Government, forwarding to it the act of accession, which shall be deposited in the archives of the said Government.

The said Government shall immediately forward to all the other Powers a duly certified copy of the notification as well as of the act of accession, mentioning the date on which it received the notification.

*Article 10.*—The present Convention shall take effect, in the case of the Powers which were parties to the first deposit of ratifications,

sixty days after the date of the Protocol recording such deposit, and, in the case of the Powers which shall ratify subsequently or which shall accede, sixty days after the notification of their ratification or of their accession has been received by the Netherland Government.

*Article 11.*—In the event of one of the Contracting Powers wishing to denounce the present Convention, the denunciation shall be notified in writing to the Netherland Government, which shall immediately communicate a duly certified copy of the notification to all the other powers, informing them of the date on which it was received.

The denunciation shall only operate in respect of the denouncing Power, and only on the expiry of one year after the notification has reached the Netherland Government.

*Article 12.*—A register kept by the Netherland Ministry for Foreign Affairs shall record the date of the deposit of ratifications effected in virtue of Article 8, paragraphs 3 and 4, as well as the date on which the notifications of accession (Article 9, paragraph 2) or of denunciation (Article 11, paragraph 1) have been received.

Each Contracting Power is entitled to have access to this register and to be supplied with duly certified extracts from it.

In faith whereof the Plenipotentiaries have appended their signatures to the present Convention.

Done at The Hague, the 18th October, 1907, in a single original, which shall remain deposited in the archives of the Netherland Government, and of which duly certified copies shall be sent, through the diplomatic channel, to the Powers invited to the Second Peace Conference.

[TRANSLATION.]

**No. 8.—Convention relative to the Laying of Automatic  
Submarine Contact Mines.**

Inspired by the principle of the freedom of the seas as the common highway of all nations ;

Seeing that, while the existing position of affairs makes it impossible to forbid the employment of automatic submarine contact mines, it is nevertheless expedient to restrict and regulate their employment in order to mitigate the severity of war and to ensure, as far as possible, to peaceful navigation the security to which it is entitled, despite the existence of war ;

Until such time as it may be found possible to formulate rules on the subject which shall ensure to the interests involved all the guarantees desirable ;

Have resolved to conclude a Convention to this effect, and have appointed as their plenipotentiaries, that is to say :

[Names of plenipotentiaries.]

Who, after having deposited their full powers, found to be in good and due form, have agreed upon the following provisions :—

*Article 1.*—It is forbidden :

1. To lay unanchored automatic contact mines, unless they be so constructed as to become harmless one hour at most after the person who laid them has ceased to control them ;
2. To lay anchored automatic contact mines which do not become harmless as soon as they have broken loose from their moorings ;
3. To use torpedoes which do not become harmless when they have missed their mark.

*Article 2.*—The laying of automatic contact mines off the coast and ports of the enemy with the sole object of intercepting commercial shipping, is forbidden.

*Article 3.*—When anchored automatic contact mines are employed, every possible precaution must be taken for the security of peaceful shipping.

The belligerents undertake to do their utmost to render these mines harmless after a limited time has elapsed, and, should the mines cease to be under observation, to notify the danger zones as soon as military exigencies permit, by a notice to mariners, which must also be communicated to the Governments through the diplomatic channel.

*Article 4.*—Neutral Powers which lay automatic contact mines off their coasts must observe the same rules and take the same precautions as are imposed on belligerents.

The neutral Power must give notice to mariners in advance of the places where automatic contact mines have been laid. This notice must be communicated at once to the Governments through the diplomatic channel.

*Article 5.*—At the close of the war, the Contracting Powers undertake to do their utmost to remove the mines which they have laid, each Power removing its own mines.

As regards anchored automatic contact mines laid by one of the belligerents off the coast of the other, their position must be notified to the other party by the Power which laid them, and each Power must proceed with the least possible delay to remove the mines in its own waters.

*Article 6.*—The Contracting Powers which do not at present own perfected mines of the description contemplated in the present Convention, and which, consequently, could not at present carry out

the rules laid down in Articles 1 and 3, undertake to convert the *matériel* of their mines as soon as possible, so as to bring it into conformity with the foregoing requirements.

*Article 7.*—The provisions of the present Convention do not apply except between Contracting powers, and then only if all the belligerents are parties to the Convention.

*Article 8.*—The present Convention shall be ratified as soon as possible.

The ratifications shall be deposited at The Hague.

The first deposit of ratifications shall be recorded in a Protocol signed by the Representatives of the Powers which take part therein and by the Netherland Minister for Foreign Affairs.

The subsequent deposits of ratifications shall be made by means of a written notification addressed to the Netherland Government and accompanied by the instrument of ratification.

A duly certified copy of the Protocol relating to the first deposit of ratifications, of the notifications mentioned in the preceding paragraph, and of the instruments of ratification, shall be immediately sent, by the Netherland Government, through the diplomatic channel, to the powers invited to the Second Peace Conference, as well as to the other Powers which have acceded to the Convention. The said Government shall, in the cases contemplated in the preceding paragraph, inform them at the same time of the date on which it received the notification.

*Article 9.*—Non-Signatory Powers may accede to the present Convention.

A Power which desires to accede notifies its intention in writing to the Netherland Government, forwarding to it the act of accession, which shall be deposited in the archives of the said Government.

The said Government shall immediately forward to all the other Powers a duly certified copy of their notification, as well as of the act of accession, mentioning the date on which it received the notification.

*Article 10.*—The present Convention shall take effect, in the case of the Powers which were parties to the first deposit of ratifications, sixty days after the date of the Protocol recording such deposit, and, in the case of the Powers which shall ratify subsequently or which shall accede, sixty days after the notification of their ratification or of their accession has been received by the Netherland Government.

*Article 11.*—The present Convention shall remain in force for seven years, dating from the sixtieth day after the date of the first deposit of ratifications.

Unless denounced, it shall continue in force after the expiry of this period.

The denunciation shall be notified in writing to the Netherland

Government, which shall immediately communicate a duly certified copy of the notification to all the Powers, informing them of the date on which it was received.

The denunciation shall only operate in respect of the denouncing Power, and only on the expiry of six months after the notification has reached the Netherland Government.

*Article 12.*—The Contracting Powers agree to reopen the question of the employment of automatic contact mines six months before the expiry of the period contemplated in the first paragraph of the preceding Article, in the event of the question not having been already taken up and settled by the Third Peace Conference.

If the Contracting Powers conclude a fresh Convention relative to the employment of mines, the present Convention shall cease to be applicable from the moment when it comes into force.

*Article 13.*—A register kept by the Netherland Ministry for Foreign Affairs shall record the date of the deposit of ratifications effected in virtue of Article 8, paragraphs 3 and 4, as well as the date on which the notifications of accession (Article 9, paragraph 2) or of denunciation (Article 11, paragraph 3) have been received.

Each Contracting Power is entitled to have access to this register and to be supplied with duly certified extracts from it.

In faith whereof the Plenipotentiaries have appended their signatures to the present Convention.

Done at The Hague, the 18th October, 1907, in a single original, which shall remain deposited in the archives of the Netherland Government, and of which duly certified copies shall be sent, through the diplomatic channel, to the Powers invited to the Second Peace Conference.

[TRANSLATION.]

### **No. 9.—Convention respecting Bombardments by Naval Forces in Time of War.**

Animated by the desire to realize the wish expressed by the First Peace Conference respecting the bombardment by naval forces of undefended ports, towns, and villages ;

Whereas it is expedient that bombardments by naval forces should be subject to rules of general application to safeguard the rights of the inhabitants and to assure the preservation of the more important buildings, by applying as far as possible to this operation of war the principles of the Regulations of 1899 respecting the Laws and Customs of Land War ; and

Actuated, accordingly, by the desire to serve the interests of humanity and to diminish the severity and disasters of war ;

Have resolved to conclude a Convention to this effect, and have, for this purpose, appointed as their Plenipotentiaries, that is to say :

[Names of Plenipotentiaries.]

Who, after having deposited their full powers, found to be in good and due form, have agreed upon the following provisions :—

#### CHAPTER I.—BOMBARDMENT OF UNDEFENDED PORTS, TOWNS, VILLAGES, DWELLINGS, OR BUILDINGS.

*Article 1.*—The bombardment by naval forces of undefended ports, towns, villages, dwellings, or buildings is forbidden.

A place may not be bombarded solely on the ground that automatic submarine contact mines are anchored off the harbour.

*Article 2.*—Military works, military or naval establishments, depôts of arms or war material, workshops or plant which could be utilised for the needs of the hostile fleet or army, and ships of war in the harbour, are not, however, included in this prohibition. The commander of a naval force may destroy them with artillery, after a summons followed by a reasonable interval of time, if all other means are impossible, and when the local authorities have not themselves destroyed them within the time fixed.

The Commander incurs no responsibility for any unavoidable damage which may be caused by a bombardment under such circumstances.

If for military reasons immediate action is necessary, and no delay can be allowed to the enemy, it is nevertheless understood that the prohibition to bombard the undefended town holds good, as in the case given in the first paragraph, and that the commander shall take all due measures in order that the town may suffer as little harm as possible.

*Article 3.*—After due notice has been given, the bombardment of undefended ports, towns, villages, dwellings, or buildings may be commenced, if the local authorities, on a formal summons being made to them, decline to comply with requisitions for provisions or supplies necessary for the immediate use of the naval force before the place in question.

Such requisitions shall be proportional to the resources of the place. They shall only be demanded in the name of the commander of the said naval force, and they shall, as far as possible, be paid for in ready money ; if not, receipts shall be given.

*Article 4.*—The bombardment of undefended ports, towns, villages, dwellings, or buildings, on account of failure to pay money contributions, is forbidden.

## CHAPTER II.—GENERAL PROVISIONS.

*Article 5.*—In bombardments by naval forces all necessary steps must be taken by the commander to spare as far as possible buildings dedicated to public worship, art, science, or charitable purposes, historic monuments, hospitals, and places where the sick or wounded are collected, provided that they are not used at the time for military purposes.

It is the duty of the inhabitants to indicate such monuments, edifices, or places by visible signs, which shall consist of large stiff rectangular panels divided diagonally into two painted triangular portions, the upper portion black, the lower portion white.

*Article 6.*—Unless military exigencies render it impossible, the officer in command of an attacking naval force must, before commencing the bombardment, do all in his power to warn the authorities.

*Article 7.*—The giving over to pillage of a town or place, even when taken by assault, is forbidden.

## CHAPTER III.—FINAL PROVISIONS.

*Article 8.*—The provisions of the present Convention do not apply except between Contracting Powers, and then only if all the belligerents are parties to the Convention.

*Article 9.*—The present Convention shall be ratified as soon as possible.

The ratifications shall be deposited at The Hague.

The first deposit of ratifications shall be recorded in a Protocol signed by the Representatives of the Powers which take part therein and by the Netherland Minister for Foreign Affairs.

The subsequent deposits of ratifications shall be made by means of a written notification addressed to the Netherland Government and accompanied by the instrument of ratification.

A duly certified copy of the Protocol relating to the first deposit of ratifications, of the notifications mentioned in the preceding paragraph, and of the instruments of ratification, shall be immediately sent by the Netherland Government, through the diplomatic channel, to the Powers invited to the Second Peace Conference, as well as to the other Powers which have acceded to the Convention. The said Government shall, in the cases contemplated in the preceding paragraph, inform them at the same time of the date on which it received the notification.

*Article 10.*—Non-Signatory Powers may accede to the present Convention.

A Power which desires to accede notifies its intention in writing

to the Netherland Government, forwarding to it the act of accession, which shall be deposited in the archives of the said Government.

The said Government shall immediately forward to all the other Powers a duly certified copy of the notification, as well as of the act of accession, mentioning the date on which it received the notification.

*Article 11.*—The present Convention shall take effect, in the case of the Powers which were parties to the first deposit of ratifications, sixty days after the date of the Protocol recording such deposit, and, in the case of the Powers which shall ratify subsequently or which shall accede, sixty days after the notification of their ratification or of their accession has been received by the Netherland Government.

*Article 12.*—In the event of one of the Contracting Powers wishing to denounce the present Convention, the denunciation shall be notified in writing to the Netherland Government, which shall immediately communicate a duly certified copy of the notification to all the other Powers informing them of the date on which it was received.

The denunciation shall only operate in respect of the denouncing Power, and only on the expiry of one year after the notification has reached the Netherland Government.

*Article 13.*—A register kept by the Netherland Ministry for Foreign Affairs shall record the date of the deposit of ratifications effected in virtue of Article 9, paragraphs 3 and 4, as well as the date on which the notifications of accession (Article 10, paragraph 2) or of denunciation (Article 12, paragraph 1) have been received.

Each Contracting power is entitled to have access to this register and to be supplied with duly certified extracts from it.

In faith whereof the plenipotentiaries have appended their signatures to the present Convention.

Done at The Hague, the 18th October, 1907, in a single original, which shall remain deposited in the archives of the Netherland Government, and of which duly certified copies shall be sent, through the diplomatic channel, to the Powers invited to the Second Peace Conference.

[TRANSLATION.]

## **No. 11.—Convention relative to certain Restrictions on the Exercise of the Right of Capture in Maritime War.**

Recognising the necessity of ensuring more effectively than hitherto the equitable application of law to the international relations of maritime Powers in time of war ;



Considering that, for this purpose, it is expedient, in giving up or, if necessary, in harmonising for the common interest certain conflicting practices of long standing, to undertake to codify in regulations of general application the guarantees due to peaceful commerce and legitimate business, as well as the conduct of hostilities by sea, that it is expedient to lay down in written mutual engagements the principles which have hitherto remained in the uncertain domain of controversy or have been left to the discretion of Governments ;

That a certain number of rules may be made forthwith, without thereby affecting the law now in force with regard to the matters which these rules do not touch ;

Have appointed as their plenipotentiaries, that is to say :

[Names of plenipotentiaries.]

Who, after having deposited their full powers, found to be in good and due form, have agreed upon the following provisions :—

#### CHAPTER I.—POSTAL CORRESPONDENCE.

*Article 1.*—The postal correspondence of neutrals or belligerents, whatever its official or private character, found on board a neutral or enemy ship on the high seas is inviolable. If the ship is detained, the correspondence is forwarded by the captor with the least possible delay.

The provisions of the preceding paragraph do not, in case of violation of blockade, apply to correspondence proceeding to or from a blockaded port.

*Article 2.*—The inviolability of postal correspondence does not exempt a neutral mail-ship from the laws and customs of naval war respecting neutral merchant-ships in general. The ship, however, may not be searched except when absolutely necessary, and then only with as much consideration and expedition as possible.

#### CHAPTER II.—EXEMPTION FROM CAPTURE OF CERTAIN VESSELS.

*Article 3.*—Vessels employed exclusively in coast-fisheries, or small boats employed in local trade, together with their appliances, rigging, tackle, and cargo, are exempt from capture.

This exemption no longer applies from the moment that they take any part whatever in hostilities.

The Contracting Powers bind themselves not to take advantage of the harmless character of the said vessels in order to use them for military purposes while preserving their peaceful appearance.

*Article 4.*—Vessels employed, on religious, scientific, or philanthropic missions are likewise exempt from capture.

## CHAPTER III.—REGULATIONS REGARDING THE CREWS OF ENEMY MERCHANT-SHIPS CAPTURED BY A BELLIGERENT.

*Article 5.*—When an enemy merchant-ship is captured by a belligerent, such of its crew as are subjects or citizens of a neutral State are not made prisoners of war.

The same principle applies in the case of the captain and officers, likewise subjects or citizens of a neutral State, if they give a formal undertaking in writing not to serve on an enemy ship while the war lasts.

*Article 6.*—The captain, officers, and members of the crew, if subjects or citizens of the enemy State, are not made prisoners of war, provided that they undertake, on the faith of a written promise, not to engage, while hostilities last, in any service connected with the operations of the war.

*Article 7.*—The names of the persons retaining their liberty under the conditions laid down in Article 5, in the second paragraph, and in Article 6, are notified by the belligerent captor to the other belligerent. The latter is forbidden knowingly to employ the said persons.

*Article 8.*—The provisions of the three preceding Articles do not apply to ships taking part in hostilities.

## CHAPTER IV.—FINAL PROVISIONS.

*Article 9.*—The provisions of the present Convention do not apply except between Contracting Powers, and then only if all the belligerents are parties to the Convention.

*Article 10.*—The present Convention shall be ratified as soon as possible.

The ratifications shall be deposited at The Hague.

The first deposit of ratifications shall be recorded in a Protocol signed by the Representatives of the Powers which take part therein and by the Netherland Minister for Foreign Affairs.

The subsequent deposits of ratifications shall be made by means of a written notification, addressed to the Netherland Government and accompanied by the instrument of ratification.

A duly certified copy of the Protocol relating to the first deposit of ratifications, of the notifications mentioned in the preceding paragraph, and of the instruments of ratification, shall be immediately sent by the Netherland Government, through the diplomatic channel, to the Powers invited to the Second Peace Conference, as well as to the other Powers which have acceded to the Convention. The said Government shall, in the cases contemplated in the preceding paragraph, inform them at the same time of the date on which it received the notification.

*Article 11.*—Non-Signatory Powers may accede to the present Convention.

A power which desires to accede notifies its intention in writing to the Netherland Government, forwarding to it the act of accession, which shall be deposited in the archives of the said Government.

The said Government shall immediately forward to all the other Powers a duly certified copy of the notification, as well as of the act of accession, mentioning the date on which it received the notification.

*Article 12.*—The present Convention shall take effect, in the case of the Powers which were parties to the first deposit of ratifications, sixty days after the date of the Protocol recording such deposit, and, in the case of the Powers which shall ratify subsequently or which shall accede, sixty days after the notification of their ratification or of their accession, has been received by the Netherland Government.

*Article 13.*—In the event of one of the Contracting Powers wishing to denounce the present Convention, the denunciation shall be notified in writing to the Netherland Government, which shall immediately communicate a duly certified copy of the notification to all the other Powers informing them of the date on which it was received.

The denunciation shall only operate in respect of the denouncing Power, and only on the expiry of one year after the notification has reached the Netherland Government.

*Article 14.*—A register kept by the Netherland Ministry for Foreign Affairs shall record the date of the deposit of ratifications effected in virtue of Article 10, paragraphs 3 and 4, as well as the date on which the notifications of accession (Article 11, paragraph 2) or of denunciation (Article 13, paragraph 1) have been received.

Each Contracting Power is entitled to have access to this register and to be supplied with duly certified extracts from it.

In faith whereof the Plenipotentiaries have appended their signatures to the present Convention.

Done at The Hague, the 18th October, 1907, in a single original, which shall remain deposited in the archives of the Netherland Government, and of which duly certified copies shall be sent, through the diplomatic channel, to the Powers invited to the Second Peace Conference.

[TRANSLATION.]

### **No. 13.—Convention respecting the Rights and Duties of Neutral Powers in Maritime War.**

With a view to harmonizing the divergent views which still exist as to the relations between neutral Powers and belligerent Powers,

in the case of naval war, and with a view to providing for the difficulties to which such divergence of views might give rise ;

Whereas, even if at present measures cannot be framed applicable to all circumstances which may arise in practice, there is nevertheless an undeniable advantage in framing, as far as may be possible, rules of general application to meet the case of war having unfortunately broken out ;

Whereas, in cases not covered by the present Convention, account must be taken of the general principles of the law of nations ;

Whereas, it is desirable that the Powers should issue detailed enactments specifying the consequences of the status of neutrality whenever adopted by them ;

Whereas, there is a recognised obligation on neutral Powers to apply to the several belligerents impartially the rules they have adopted ; and

Whereas, it is in conformity with these ideas that these rules should not, in principle, be altered, in the course of the war, by a neutral Power, except in a case where experience has shown that such change is necessary for the protection of the rights of that Power ;

Have agreed to observe the following rules of general application, which are not meant, however, to modify provisions of existing general Treaties, and have appointed as their Plenipotentiaries, that is to say :

[Names of Plenipotentiaries.]

Who, after having deposited their full powers, found to be in good and due form, have agreed upon the following provisions :—

*Article 1.*—Belligerents are bound to respect the sovereign rights of neutral Powers and to abstain, in neutral territory or neutral waters, from any act which would, if knowingly permitted by any Power, constitute a violation of neutrality.

*Article 2.*—Any act of hostility, including therein capture and the exercise of the right of search, committed by belligerent war-ships in the territorial waters of a neutral Power, constitutes a violation of neutrality and is strictly forbidden.

*Article 3.*—When a ship has been captured in the territorial waters of a neutral Power, such Power must, if the prize is still within its jurisdiction, employ the means at its disposal to release the prize with its officers and crew, and to intern the prize crew.

If the prize is not within the jurisdiction of the neutral Power, the captor Government, on the demand of the neutral Power, must liberate the prize with its officers and crew.

*Article 4.*—A Prize Court cannot be established by a belligerent or neutral territory or on a vessel in neutral waters.

*Article 5.*—Belligerents are forbidden to use neutral ports and waters as a base of naval operations against their adversaries; in particular they may not erect wireless telegraphy stations or any apparatus for the purpose of communicating with the belligerent forces on land or sea.

*Article 6.*—The supply, in any manner, directly or indirectly, of war-ships, supplies, or war material of any kind whatever, by a neutral Power to a belligerent Power, is forbidden.

*Article 7.*—A neutral Power is not bound to prevent the export or transit, for either belligerent, of arms, munitions of war, or, in general, of anything which could be of use to an army or fleet.

*Article 8.*—A neutral Government is bound to employ the means at its disposal to prevent the fitting out or arming of any vessel within its jurisdiction which it has reason to believe is intended to cruise, or engage in hostile operations, against a Power with which that Government is at peace. It is also bound to display the same vigilance to prevent the departure from its jurisdiction of any vessel intended to cruise, or engage in hostile operations, which has been adapted entirely or partly within the said jurisdiction for use in war.

*Article 9.*—A neutral Power must apply to the two belligerents impartially the conditions, restrictions, or prohibitions issued by it in regard to the admission into its ports, roadsteads, or territorial waters, of belligerent war-ships or of their prizes.

Nevertheless, a neutral Power may forbid any particular belligerent vessel which has failed to conform to the orders and regulations made by it, or which has violated neutrality, to enter its ports or roadsteads.

*Article 10.*—The neutrality of a Power is not affected by the mere passage through its territorial waters of war-ships or prizes belonging to belligerents.

*Article 11.*—A neutral Power may allow belligerent war-ships to employ its licensed pilots.

*Article 12.*—In default of special provisions to the contrary in the legislation of a neutral Power, belligerent war-ships are not permitted to remain in the ports, roadsteads, or territorial waters of the said Power for more than twenty-four hours, except in the cases covered by the present Convention.

*Article 13.*—If a Power which has received notice of the outbreak of hostilities learns that a belligerent war-ship is in one of its ports or roadsteads, or in its territorial waters, it must notify the said ship to depart within twenty-four hours or within the time prescribed by the local law.

*Article 14.*—A belligerent war-ship may not prolong its stay in a neutral port beyond the time permitted except on account of damage or stress of weather. It must depart as soon as the cause of the delay is at an end.

The regulations as to the length of time which such vessels may remain in neutral ports, roadsteads, or waters, do not apply to war-ships devoted exclusively to religious, scientific, or philanthropic purposes.

*Article 15.*—In default of special provisions to the contrary in the legislation of a neutral Power, the maximum number of war-ships belonging to a belligerent which may be in one of the ports or roadsteads of that Power simultaneously shall be three.

*Article 16.*—When war-ships belonging to both belligerents are present simultaneously in a neutral port or roadstead, a period of not less than twenty-four hours must elapse between the departure of the ship belonging to one belligerent and the departure of the ship belonging to the other.

The order of departure is determined by the order of arrival, unless the ship which arrived first is so circumstanced that an extension of its stay is permissible.

A belligerent war-ship may not leave a neutral port or roadstead until twenty-four hours after the departure of a merchant-ship flying the flag of its adversary.

*Article 17.*—In neutral ports and roadsteads belligerent war-ships may only carry out such repairs as are absolutely necessary to render them seaworthy, and may not add in any manner whatever to their fighting force. The local authorities of the neutral Power shall decide what repairs are necessary, and these must be carried out with the least possible delay.

*Article 18.*—Belligerent war-ships may not make use of neutral ports, roadsteads, or territorial waters for replenishing or increasing their supplies of war material or their armament, or for completing their crews.

*Article 19.*—Belligerent war-ships may only revictual in neutral ports or roadsteads to bring up their supplies to the peace standard.

Similarly these vessels may only ship sufficient fuel to enable them to reach the nearest port in their own country. They may, on the other hand, fill up their bunkers built to carry fuel, when in neutral countries which have adopted this method of determining the amount of fuel to be supplied.

If, in accordance with the law of the neutral Power, the ships are not supplied with coal within twenty-four hours of their arrival, the duration of their permitted stay is extended by twenty-four hours.

*Article 20.*—Belligerent war-ships which have shipped fuel in a port belonging to a neutral Power may not within the succeeding three months replenish their supply in a port of the same Power.

*Article 21.*—A prize may only be brought into a neutral port on account of unseaworthiness, stress of weather, or want of fuel or provisions.

It must leave as soon as the circumstances which justified its entry are at an end. If it does not, the neutral Power must order it to leave at once; should it fail to obey, the neutral Power must employ the means at its disposal to release it with its officers and crew and to intern the prize crew.

*Article 22.*—A neutral Power must, similarly, release a prize brought into one of its ports under circumstances other than those referred to in Article 21.

*Article 23.*—A neutral Power may allow prizes to enter its ports and roadsteads, whether under convoy or not, when they are brought there to be sequestrated pending the decision of a Prize Court. It may have the prize taken to another of its ports.

If the prize is convoyed by a war-ship, the prize crew may go on board the convoying ship.

If the prize is not under convoy, the prize crew are left at liberty.

*Article 24.*—If, notwithstanding the notification of the neutral Power, a belligerent ship of war does not leave a port where it is not entitled to remain, the neutral Power is entitled to take such measures as it considers necessary to render the ship incapable of putting to sea so long as the war lasts, and the commanding officer of the ship must facilitate the execution of such measures.

When a belligerent ship is detained by a neutral Power, the officers and crew are likewise detained.

The officers and crew so detained may be left in the ship or kept either on another vessel or on land, and may be subjected to such restrictions as it may appear necessary to impose upon them. A sufficient number of men must, however, be always left on board for looking after the vessel.

The officers may be left at liberty on giving their word not to quit the neutral territory without permission.

*Article 25.*—A neutral Power is bound to exercise such vigilance as the means at its disposal permit to prevent any violation of the provisions of the above Articles occurring in its ports or roadsteads or in its waters.

*Article 26.*—The exercise by a neutral Power of the rights laid down in the present Convention can under no circumstances be considered as an unfriendly act by one or other belligerents who has accepted the Articles relating thereto.

*Article 27.*—The Contracting Powers shall communicate to each other in due course all statutes, orders, and other enactments defining in their respective countries the situation of belligerent war-ships in their ports and waters, by means of a communication addressed to the Government of the Netherlands, and forwarded immediately by that Government to the other Contracting Powers.

*Article 28.*—The provisions of the present Convention do not apply except to the Contracting Powers, and then only if all the belligerents are parties to the Convention.

*Article 29.*—The present Convention shall be ratified as soon as possible.

The ratification shall be deposited at The Hague.

The first deposit of ratifications shall be recorded in a Protocol signed by the Representatives of the Powers which take part therein and by the Netherland Minister for Foreign Affairs.

The subsequent deposits of ratifications shall be made by means of a written notification addressed to the Netherland Government and accompanied by the instrument of ratification.

A duly certified copy of the Protocol relating to the first deposit of ratifications, of the notifications mentioned in the preceding paragraph, and of the instruments of ratification, shall be immediately sent by the Netherland Government, through the diplomatic channel, to the Powers invited to the Second Peace Conference, as well as to the other Powers which have acceded to the Convention. The said Government shall, in the cases contemplated in the preceding paragraph, inform them at the same time of the date on which it received the notification.

*Article 30.*—Non-Signatory Powers may accede to the present Convention.

A Power which desires to accede notifies its intention in writing to the Netherland Government, forwarding to it the act of accession, which shall be deposited in the archives of the said Government.

The said Government shall immediately forward to all the other Powers, a duly certified copy of the notification as well as of the act of accession, mentioning the date on which it received the notification.

*Article 31.*—The present Convention shall take effect, in the case of the Powers which were parties to the first deposit of the ratifications, sixty days after the date of the Protocol recording such deposit, and, in the case of the Powers which shall ratify subsequently or which shall accede, sixty days after the notification of their ratification or of their accession has been received by the Netherland Government.

*Article 32.*—In the event of one of the Contracting Powers wishing to denounce the present Convention, the denunciation shall be notified in writing to the Netherland Government, which shall



immediately communicate a duly certified copy of the notification to all the other Powers, informing them of the date on which it was received.

The denunciation shall only operate in respect of the denouncing Power, and only on the expiry of one year after the notification has reached the Netherland Government.

*Article 33.*—A register kept by the Netherland Ministry for Foreign Affairs shall record the date of the deposit of ratifications effected in virtue of Article 29, paragraphs 3 and 4, as well as the date on which the notifications of accession (Article 30, paragraph 2) or of denunciation (Article 32, paragraph 1) have been received.

Each Contracting Power is entitled to have access to this register and to be supplied with duly certified extracts from it.

In faith whereof the Plenipotentiaries have appended their signatures to the present Convention.

Done at The Hague, the 18th October, 1907, in a single original, which shall remain deposited in the archives of the Netherland Government, and of which duly certified copies shall be sent, through the diplomatic channel, to the Powers which have been invited to the Second Peace Conference.

## APPENDIX D

### FINAL PROTOCOL OF THE LONDON NAVAL CONFERENCE

(TRANSLATION.)

#### Final Protocol.

The London Naval Conference, called together by His Britannic Majesty's Government, assembled at the Foreign Office on the 4th December, 1908, with the object of laying down the generally recognized principles of international law in accordance with Article 7 of the Convention signed at The Hague on the 18th October, 1907, for the establishment of an International Prize Court.

The Powers enumerated below took part in this Conference, at which they appointed as their Representatives the following Delegates :—

Germany.	Great Britain.
The United States of America.	Italy.
Austria-Hungary.	Japan.
Spain.	Netherlands.
France.	Russia.

In a series of sittings held from the 4th December, 1908, to the 26th February, the Conference has concluded, to be submitted for signature by the Plenipotentiaries the *Declaration concerning the laws of naval war*, the text of which is annexed to the present Protocol.

Furthermore, the following wish has been recorded by the Delegates of those Powers which have signed or expressed the intention of signing the Convention of The Hague of the 18th October, 1907, for the establishment of an International Prize Court :—

*The Delegates of the Powers represented at the Naval Conference which have signed or expressed the intention of signing the Convention of The Hague of the 18th October, 1907, for the establishment of an International Prize Court, having regard to the difficulties of a constitutional nature which, in some States, stand in the way of the ratification of that Convention in its present*

*form, agree to call the attention of their respective governments to the advantage of concluding an arrangement under which such States would have the power, at the time of depositing their ratifications, to add thereto a reservation to the effect that resort to the International Prize Court in respect of decisions of their National Tribunals shall take the form of a direct claim for compensation, provided always that the effect of this reservation shall not be such as to impair the rights secured under the said Convention either to individuals or to their Governments, and that the terms of the reservation shall form the subject of a subsequent understanding between the Powers signatory of that Convention.*

In faith whereof the Plenipotentiaries and the Delegates representing those Plenipotentiaries who have already left London have signed the present Protocol.

Done at London the twenty-sixth day of February, one thousand nine hundred and nine, in a single original, which shall be deposited in the archives of the British Government and of which duly certified copies shall be sent through the diplomatic channel to the Powers represented at the Naval Conference.

For Germany :

KRIEGE.

For the United States of America :

C. H. STOCKTON.

GEORGE GRAFTON WILSON.

For Austria-Hungary :

C. DUMBA.

For Spain :

RAMÓN ESTRADA.

For France :

L. RENAULT.

For Great Britain :

DESART.

For Italy :

GIOVANNI LOVATELLI.

For Japan :

T. SAKAMOTO.

E. YAMAZA.

For the Netherlands :

J. A. ROËLL.

L. H. RUYSSENAERS.

For Russia :

F. BEHR.

## THE DECLARATION OF LONDON OF 1909

[TRANSLATION.]

**Declaration concerning the Laws of Naval War.**

HIS Majesty the German Emperor, King of Prussia; the President of the United States of America; His Majesty the Emperor of Austria, King of Bohemia, etc., and Apostolic King of Hungary; His Majesty the King of Spain; the President of the French Republic; His Majesty the King of the United Kingdom of Great Britain and Ireland and of the British Dominions beyond the Seas, Emperor of India; His Majesty the King of Italy; His Majesty the Emperor of Japan; Her Majesty the Queen of the Netherlands; His Majesty the Emperor of all the Russias.

Having regard to the terms in which the British Government invited various Powers to meet in conference in order to arrive at an agreement as to what are the generally recognised rules of international law within the meaning of Article 7 of the Convention of 18th October, 1907, relative to the establishment of an International Prize Court;

Recognizing all the advantages which an agreement as to the said rules would, in the unfortunate event of a naval war, present, both as regards peaceful commerce, and as regards the belligerents and their diplomatic relations with neutral Governments;

Having regard to the divergence often found in the methods by which it is sought to apply in practice the general principles of international law;

Animated by the desire to ensure henceforward a greater measure of uniformity in this respect;

Hoping that a work so important to the common welfare will meet with general approval;

Have appointed as their Plenipotentiaries, that is to say:

[Here follows the Names.]

Who, after having communicated their full powers, found to be in good and due form, have agreed to make the present Declaration:—

**Preliminary Provision.**

The Signatory Powers are agreed that the rules contained in the following Chapters correspond in substance with the generally recognised principles of international law.

## CHAPTER I.—BLOCKADE IN TIME OF WAR.

*Article 1.*—A blockade must not extend beyond the ports and coasts belonging to or occupied by the enemy.

*Article 2.*—In accordance with the Declaration of Paris of 1856, a blockade, in order to be binding, must be effective—that is to say, it must be maintained by a force sufficient really to prevent access to the enemy coastline.

*Article 3.*—The question whether a blockade is effective is a question of fact.<sup>2</sup>

*Article 4.*—A blockade is not regarded as raised if the blockading force is temporarily withdrawn on account of stress of weather.

*Article 5.*—A blockade must be applied impartially to the ships of all nations.

*Article 6.*—The commander of a blockading force may give permission to a warship to enter, and subsequently to leave, a blockaded port.

*Article 7.*—In circumstances of distress, acknowledged by an officer of the blockading force, a neutral vessel may enter a place under blockade and subsequently leave it, provided that she has neither discharged nor shipped any cargo there.

*Article 8.*—A blockade, in order to be binding, must be declared in accordance with Article 9, and notified in accordance with Articles 11 and 16.

*Article 9.*—A declaration of blockade is made either by the blockading Power or by the naval authorities acting in its name.

It specifies—

- (1) The date when the blockade begins ;
- (2) The geographical limits of the coastline under blockade ;
- (3) The period within which neutral vessels may come out.

*Article 10.*—If the operations of the blockading Power, or of the naval authorities acting in its name, do not tally with the particulars, which, in accordance with Article 9 (1) and (2), must be inserted in the declaration of blockade, the declaration is void, and a new declaration is necessary in order to make the blockade operative.

*Article 11.*—A declaration of blockade is notified—

- (1) To neutral Powers, by the blockading Power by means of a communication addressed to the Governments direct, or to their representatives accredited to it.
- (2) To the local authorities, by the officer commanding the blockading force. The local authorities will, in turn, inform the foreign consular officers at the port or on the coastline under blockade as soon as possible.

*Article 12.*—The rules as to declaration and notification of blockade apply to cases where the limits of a blockade are extended, or where a blockade is re-established after having been raised.

*Article 13.*—The voluntary raising of a blockade, as also any restriction in the limits of a blockade, must be notified in the manner prescribed by Article 11.

*Article 14.*—The liability of a neutral vessel to capture for breach of blockade is contingent on her knowledge, actual or presumptive, of the blockade.

*Article 15.*—Failing proof to the contrary, knowledge of the blockade is presumed if the vessel left a neutral port subsequently to the notification of the blockade to the Power to which such port belongs, provided that such notification was made in sufficient time.

*Article 16.*—If a vessel approaching a blockaded port has no knowledge, actual or presumptive, of the blockade, the notification must be made to the vessel itself by an officer of one of the ships of the blockading force. This notification should be entered in the vessel's logbook, and must state the day and hour, and the geographical position of the vessel at the time.

If through the negligence of the officer commanding the blockading force no declaration of blockade has been notified to the local authorities, or, if in the declaration, as notified, no period has been mentioned within which neutral vessels may come out, a neutral vessel coming out of the blockaded port must be allowed to pass free.

*Article 17.*—Neutral vessels may not be captured for breach of blockade except within the area of operations of the warships detailed to render the blockade effective.

*Article 18.*—The blockading forces must not bar access to neutral ports or coasts.

*Article 19.*—Whatever may be the ulterior destination of a vessel or of her cargo, she cannot be captured for breach of blockade, if, at the moment, she is on her way to a non-blockaded port.

*Article 20.*—A vessel which has broken blockade outwards, or which has attempted to break blockade inwards, is liable to capture so long as she is pursued by a ship of the blockading force. If the pursuit is abandoned, or if the blockade is raised, her capture can no longer be effected.

*Article 21.*—A vessel found guilty of breach of blockade is liable to condemnation. The cargo is also condemned, unless it is proved that at the time of the shipment of the goods the shipper neither knew nor could have known of the intention to break the blockade.

## CHAPTER II.—CONTRABAND OF WAR.

*Article 22.*—The following articles may, without notice, be treated as contraband of war, under the name of absolute contraband :—

- (1) Arms of all kinds, including arms for sporting purposes and their distinctive component parts.

- (2) Projectiles, charges, and cartridges of all kinds, and their distinctive component parts.
- (3) Powder and explosives specially prepared for use in war.
- (4) Gun-mountings, limber boxes, limbers, military waggons, field forges, and their distinctive component parts.
- (5) Clothing and equipment of a distinctively military character.
- (6) All kinds of harness of a distinctively military character.
- (7) Saddle, draught, and pack animals suitable for use in war.
- (8) Articles of camp equipment, and their distinctive component parts.
- (9) Armour plates.
- (10) Warships, including boats, and their distinctive component parts of such a nature that they can only be used on a vessel of war.
- (11) Implements and apparatus designed exclusively for the manufacture of munitions of war, for the manufacture or repair of arms, or war material for use on land or sea.

*Article 23.*—Articles exclusively used for war may be added to the list of absolute contraband by a declaration, which must be notified.

Such notification must be addressed to the Governments of other Powers, or to their representatives accredited to the Power making the declaration. A notification made after the outbreak of hostilities is addressed only to neutral Powers.

*Article 24.*—The following articles, susceptible of use in war as well as for purposes of peace, may, without notice, be treated as contraband of war, under the name of conditional contraband :—

- (1) Foodstuffs.
- (2) Forage and grain, suitable for feeding animals.
- (3) Clothing, fabrics for clothing, and boots and shoes, suitable for use in war.
- (4) Gold and silver in coin or bullion ; paper money.
- (5) Vehicles of all kinds available for use in war, and their component parts.
- (6) Vessels, craft, and boats of all kinds ; floating docks, parts of docks and their component parts.
- (7) Railway material, both fixed and rolling-stock, and material for telegraphs, wireless telegraphs, and telephones.
- (8) Balloons and flying machines and their distinctive component parts, together with accessories and articles recognizable as intended for use in connection with balloons and flying machines.
- (9) Fuel ; lubricants.
- (10) Powder and explosives not specially prepared for use in war.
- (11) Barbed wire and implements for fixing and cutting the same.

- (12) Horseshoes and shoeing materials.
- (13) Harness and saddlery.
- (14) Field glasses, telescopes, chronometers, and all kinds of nautical instruments.

*Article 25.*—Articles susceptible of use in war as well as for purposes of peace, other than those enumerated in Articles 22 and 24, may be added to the list of conditional contraband by a declaration, which must be notified in the manner provided for in the second paragraph of Article 23.

*Article 26.*—If a Power waives, so far as it is concerned, the right to treat as contraband of war an article comprised in any of the classes enumerated in Articles 22 and 24, such intention shall be announced by a declaration, which must be notified in the manner provided for in the second paragraph of Article 23.

*Article 27.*—Articles which are not susceptible of use in war may not be declared contraband of war.

*Article 28.*—The following may not be declared contraband of war :—

- (1) Raw cotton, wool, silk, jute, flax, hemp, and other raw materials of the textile industries, and yarns of the same.
- (2) Oil seeds and nuts ; copra.
- (3) Rubber, resins, gums, and lacs ; hops.
- (4) Raw hides and horns, bones, and ivory.
- (5) Natural and artificial manures, including nitrates and phosphates for agricultural purposes.
- (6) Metallic ores.
- (7) Earths, clays, lime, chalk, stone, including marble, bricks, slates, and tiles.
- (8) Chinaware and glass.
- (9) Paper and paper-making materials.
- (10) Soap, paint and colours, including articles exclusively used in their manufacture, and varnish.
- (11) Bleaching powder, soda ash, caustic soda, salt cake, ammonia, sulphate of ammonia, and sulphate of copper.
- (12) Agricultural, mining, textile, and printing machinery.
- (13) Precious and semi-precious stones, pearls, mother-of-pearl, and coral.
- (14) Clocks and watches, other than chronometers.
- (15) Fashion and fancy goods.
- (16) Feathers of all kinds, hairs, and bristles.
- (17) Articles of household furniture and decoration ; office furniture and requisites.

*Article 29.*—Likewise the following may not be treated as contraband of war :—

- (1) Articles serving exclusively to aid the sick and wounded.



They can, however, in case of urgent military necessity and subject to the payment of compensation, be requisitioned, if their destination is that specified in Article 30.

- (2) Articles intended for the use of the vessel in which they are found, as well as those intended for the use of her crew and passengers during the voyage.

*Article 30.*—Absolute contraband is liable to capture if it is shown to be destined to territory belonging to or occupied by the enemy, or to the armed forces of the enemy. It is immaterial whether the carriage of the goods is direct or entails transshipment or a subsequent transport by land.

*Article 31.*—Proof of the destination specified in Article 30 is complete in the following cases :—

- (1) When the goods are documented for discharge in an enemy port, or for delivery to the armed forces of the enemy.
- (2) When the vessel is to call at enemy ports only, or when she is to touch at an enemy port or meet the armed forces of the enemy before reaching the neutral port for which the goods in question are documented.

*Article 32.*—Where a vessel is carrying absolute contraband, her papers are conclusive proof as to the voyage on which she is engaged, unless she is found clearly out of the course indicated by her papers and unable to give adequate reasons to justify such deviation.

*Article 33.*—Conditional contraband is liable to capture if it is shown to be destined for the use of the armed forces or of a government department of the enemy State, unless in this latter case the circumstances show that the goods cannot in fact be used for the purposes of the war in progress. This latter exception does not apply to a consignment coming under Article 24 (4).

*Article 34.*—The destination referred to in Article 33 is presumed to exist if the goods are consigned to enemy authorities, or to a contractor established in the enemy country who, as a matter of common knowledge, supplies articles of this kind to the enemy. A similar presumption arises if the goods are consigned to a fortified place belonging to the enemy, or other place serving as a base for the armed forces of the enemy. No such presumption, however, arises in the case of a merchant vessel bound for one of these places if it is sought to prove that she herself is contraband.

In cases where the above presumptions do not arise, the destination is presumed to be innocent.

The presumptions set up by this Article may be rebutted.

*Article 35.*—Conditional contraband is not liable to capture, except when found on board a vessel bound for territory belonging to or occupied by the enemy, or for the armed forces of the enemy, and when it is not to be discharged in an intervening neutral port.

The ship's papers are conclusive proof both as to the voyage on which the vessel is engaged and as to the port of discharge of the goods, unless she is found clearly out of the course indicated by her papers, and unable to give adequate reasons to justify such deviation.

*Article 36.*—Notwithstanding the provisions of Article 35, conditional contraband, if shown to have the destination referred to in Article 33, is liable to capture in cases where the enemy country has no seaboard.

*Article 37.*—A vessel carrying goods liable to capture as absolute or conditional contraband may be captured on the high seas or in the territorial waters of the belligerents throughout the whole of her voyage, even if she is to touch at a port of call before reaching the hostile destination.

*Article 38.*—A vessel may not be captured on the ground that she has carried contraband on a previous occasion if such carriage is in point of fact at an end.

*Article 39.*—Contraband goods are liable to condemnation.

*Article 40.*—A vessel carrying contraband may be condemned if the contraband, reckoned either by value, weight, volume, or freight, forms more than half the cargo.

*Article 41.*—If a vessel carrying contraband is released, she may be condemned to pay the costs and expenses incurred by the captor in respect of the proceedings in the national prize court and the custody of the ship and cargo during the proceedings.

*Article 42.*—Goods which belong to the owner of the contraband and are on board the same vessel are liable to condemnation.

*Article 43.*—If a vessel is encountered at sea while unaware of the outbreak of hostilities or of the declaration of contraband which applies to her cargo, the contraband cannot be condemned except on payment of compensation; the vessel herself and the remainder of the cargo are not liable to condemnation or to the costs and expenses referred to in Article 41. The same rule applies if the master, after becoming aware of the outbreak of hostilities, or of the declaration of contraband, has had no opportunity of discharging the contraband.

A vessel is deemed to be aware of the existence of a state of war, or of a declaration of contraband, if she left a neutral port subsequently to the notification to the Power to which such port belongs of the outbreak of hostilities or of the declaration of contraband respectively, provided that such notification was made in sufficient time. A vessel is also deemed to be aware of the existence of a state of war if she left an enemy port after the outbreak of hostilities.

*Article 44.*—A vessel which has been stopped on the ground that she is carrying contraband, and which is not liable to condemnation on account of the proportion of contraband on board, may, when the circumstances permit, be allowed to continue her voyage if the master is willing to hand over the contraband to the belligerent warship.

The delivery of the contraband must be entered by the captor on the logbook of the vessel stopped, and the master must give the captor duly certified copies of all relevant papers.

The captor is at liberty to destroy the contraband that has been handed over to him under these conditions.

### CHAPTER III.—UNNEUTRAL SERVICE.

*Article 45.*—A neutral vessel will be condemned and will, in a general way, receive the same treatment as a neutral vessel liable to condemnation for carriage of contraband :—

- (1) If she is on a voyage specially undertaken with a view to the transport of individual passengers who are embodied in the armed forces of the enemy, or with a view to the transmission of intelligence in the interest of the enemy.
- (2) If, to the knowledge of either the owner, the charterer, or the master, she is transporting a military detachment of the enemy, or one or more persons who, in the course of the voyage, directly assist the operations of the enemy.

In the cases specified under the above heads, goods belonging to the owner of the vessel are likewise liable to condemnation.

The provisions of the present Article do not apply if the vessel is encountered at sea while unaware of the outbreak of hostilities, or if the master, after becoming aware of the outbreak of hostilities, has had no opportunity of disembarking the passengers. The vessel is deemed to be aware of the existence of a state of war if she left an enemy port subsequently to the outbreak of hostilities, or a neutral port subsequently to the notification of the outbreak of hostilities to the Power to which such port belongs, provided that such notification was made in sufficient time.

*Article 46.*—A neutral vessel will be condemned and, in a general way, receive the same treatment as would be applicable to her if she were an enemy merchant vessel :—

- (1) If she takes a direct part in the hostilities ;
- (2) If she is under the orders or control of an agent placed on board by the enemy Government ;
- (3) If she is in the exclusive employment of the enemy Government ;
- (4) If she is exclusively engaged at the time either in the transport of enemy troops or in the transmission of intelligence in the interest of the enemy.

In the cases covered by the present Article, goods belonging to the owner of the vessel are likewise liable to condemnation.

*Article 47.*—Any individual embodied in the armed forces of the enemy who is found on board a neutral merchant vessel, may be made a prisoner of war, even though there be no ground for the capture of the vessel.

#### CHAPTER IV.—DESTRUCTION OF NEUTRAL PRIZES.

*Article 48.*—A neutral vessel which has been captured may not be destroyed by the captor; she must be taken into such port as is proper for the determination there of all questions concerning the validity of the capture.

*Article 49.*—As an exception, a neutral vessel which has been captured by a belligerent warship, and which would be liable to condemnation, may be destroyed if the observance of Article 48 would involve danger to the safety of the warship or to the success of the operations in which she is engaged at the time.

*Article 50.*—Before the vessel is destroyed all persons on board must be placed in safety, and all the ship's papers and other documents which the parties interested consider relevant for the purpose of deciding on the validity of the capture must be taken on board the warship.

*Article 51.*—A captor who has destroyed a neutral vessel must, prior to any decision respecting the validity of the prize, establish that he only acted in the face of an exceptional necessity of the nature contemplated in Article 49. If he fails to do this, he must compensate the parties interested and no examination shall be made of the question whether the capture was valid or not.

*Article 52.*—If the capture of a neutral vessel is subsequently held to be invalid, though the act of destruction has been held to have been justifiable, the captor must pay compensation to the parties interested, in place of the restitution to which they would have been entitled.

*Article 53.*—If neutral goods not liable to condemnation have been destroyed with the vessel, the owner of such goods is entitled to compensation.

*Article 54.*—The captor has the right to demand the handing over, or to proceed himself to the destruction of, any goods liable to condemnation found on board a vessel not herself liable to condemnation, provided that the circumstances are such as would, under Article 49, justify the destruction of a vessel herself liable to condemnation. The captor must enter the goods surrendered or destroyed in the logbook of the vessel stopped, and must obtain duly certified copies of all relevant papers. When the goods have

**Final Provisions.**

*Article 65.*—The provisions of the present Declaration must be treated as a whole, and cannot be separated.

*Article 66.*—The Signatory Powers undertake to insure the mutual observance of the rules contained in the present Declaration in any war in which all the belligerents are parties thereto. They will therefore issue the necessary instructions to their authorities and to their armed forces, and will take such measures as may be required in order to insure that it will be applied by their courts, and more particularly by their prize courts.

*Article 67.*—The present Declaration shall be ratified as soon as possible.

The ratifications shall be deposited in London.

The first deposit of ratifications shall be recorded in a Protocol signed by the Representatives of the Powers taking part therein, and by His Britannic Majesty's Principal Secretary of State for Foreign Affairs.

The subsequent deposits of ratifications shall be made by means of a written notification addressed to the British Government, and accompanied by the instrument of ratification.

A duly certified copy of the Protocol relating to the first deposit of ratifications, and of the notifications mentioned in the preceding paragraph as well as of the instruments of ratification which accompany them, shall be immediately sent by the British Government, through the diplomatic channel, to the Signatory Powers. The said Government shall, in the cases contemplated in the preceding paragraph, inform them at the same time of the date on which it received the notification.

*Article 68.*—The present Declaration shall take effect, in the case of the Powers which were parties to the first deposit of ratifications, sixty days after the date of the Protocol recording such deposit, and, in the case of the Powers which shall ratify subsequently, sixty days after the notification of their ratification shall have been received by the British Government.

*Article 69.*—In the event of one of the Signatory Powers wishing to denounce the present Declaration, such denunciation can only be made to take effect at the end of a period of twelve years, beginning sixty days after the first deposit of ratifications, and, after that time, at the end of successive periods of six years, of which the first will begin at the end of the period of twelve years.

Such denunciation must be notified in writing, at least one year in advance, to the British Government, which shall inform all the other Powers.

It will only operate in respect of the denouncing Power.

*Article 70.*—The Powers represented at the London Naval Conference attach particular importance to the general recognition of the

rules which they have adopted, and therefore express the hope that the Powers which were not represented there will accede to the present Declaration. They request the British Government to invite them to do so.

A Power which desires to accede shall notify its intention in writing to the British Government, and transmit simultaneously the act of accession, which will be deposited in the archives of the said Government.

The said Government shall forthwith transmit to all the other Powers a duly certified copy of the notification, together with the act of accession, and communicate the date on which such notification was received. The accession takes effect sixty days after such date.

In respect of all matters concerning this Declaration, acceding Powers shall be on the same footing as the Signatory Powers.

*Article 71.*—The present Declaration, which bears the date of the 26th February, 1909, may be signed in London up till the 30th June, 1909, by the Plenipotentiaries of the Powers represented at the Naval Conference.

In faith whereof the Plenipotentiaries have signed the present Declaration, and have thereto affixed their seals.

Done at London, the twenty-sixth day of February, one thousand nine hundred and nine, in a single original, which shall remain deposited in the archives of the British Government, and of which duly certified copies shall be sent through the diplomatic channel to the Powers represented at the Naval Conference—

For Germany :

KRIEGE.

For the United States of America :

C. H. STOCKTON.

GEORGE GRAFTON WILSON.

• For Austria-Hungary :

C. DUMBA.

For France :

L. RENAULT.

For Great Britain :

DESART.

For the Netherlands :

J. A. ROËLL.

L. H. RUYSSENAERS.

Japan signed 10th June, 1909.

Russia signed 29th June, 1909.

Spain signed 23rd April, 1909.

Italy signed 25th May, 1909.

## APPENDIX E

### A BILL

TO CONSOLIDATE, WITH AMENDMENTS, THE ENACTMENTS  
RELATING TO NAVAL PRIZE OF WAR.

*Presented by Secretary Sir Edward Grey, " "*  
*supported by*

*Mr McKenna, Mr Attorney-General, Mr Solicitor-General, and*  
*" Mr McKinnon Wood.*

WHEREAS at the Second Peace Conference held at The Hague in the year nineteen hundred and seven a Convention, the English translation whereof is set forth in the First Schedule to this Act, was drawn up, but it is desirable that the same should not be ratified by His Majesty until such amendments have been made in the law relating to naval prize of war as will enable effect to be given to the Convention :

And whereas for the purpose aforesaid it is expedient to consolidate the law relating to naval prize of war with such amendments as aforesaid and with certain other minor amendments :

Be it therefore enacted by the King's most Excellent Majesty, by and with the advice and consent of the Lords Spiritual and Temporal, and Commons, in this present Parliament assembled, and by the authority of the same, as follows :—

#### PART I.

##### COURTS AND OFFICERS.

##### *The Prize Court in England.*

1.—(1) The High Court shall, without special warrant, be a prize court, and shall, on the high seas, and throughout His Majesty's Dominions, and in every place where His Majesty has jurisdiction, have all such jurisdiction as the High Court of Admiralty possessed when acting as a prize court, and generally have jurisdiction to determine all questions as to the validity of the capture of a ship or goods, the legality of the destruction of a captured ship or goods,

and as to the payment of compensation in respect of such a capture or destruction.

(2) Subject to rules of court, all causes and matters within the jurisdiction of the High Court as a prize court shall be assigned to the Probate, Divorce, and Admiralty Division of the Court.

2. The High Court as a prize court shall have power to enforce any order or decree of a prize court in a British possession, and any order of the Supreme Prize Court constituted under this Act in a prize appeal.

*Prize Courts in British Possessions.*

3. His Majesty may, by commission addressed to the Admiralty, empower the Admiralty to authorise, and the Admiralty may thereupon by warrant authorise, either a Vice-Admiralty court or a Colonial Court of Admiralty, within the meaning of the Colonial Courts of Admiralty Act, 1890, to act as a prize court in a British possession, or may in like manner establish a Vice-Admiralty court for the purpose of so acting; and any court so authorized shall, subject to the terms of the warrant from the Admiralty, have all such jurisdiction as is by this Act conferred on the High Court as a prize court.

4.—(1) Any commission, warrant, or instructions from His Majesty the King or the Admiralty for the purpose of commissioning a prize court at any place in a British possession may, notwithstanding the existence of peace, be issued at any time, with a direction that the court shall act only upon such proclamation as herein-after mentioned being made in the possession.

(2) Where any such commission, warrant, or instructions have been issued, then, subject to instructions from His Majesty the Vice-Admiral of such possession may, when satisfied by information from a Secretary of State or otherwise that war has broken out between His Majesty and any foreign State, proclaim that war has so broken out, and thereupon the said commission, warrant, and instructions shall take effect as if the same had been issued after the breaking out of such war and such foreign State were named therein.

(3) Any such commission, warrant, or instructions may be revoked or altered from time to time.

5. Every prize court in a British possession shall enforce within its jurisdiction all orders and decrees of the High Court and of any other prize court in prize causes, and all orders of the Supreme Prize Court constituted under this Act in prize appeals.

6.—(1) His Majesty in Council may, with the concurrence of the Treasury, grant to the judge of any prize court in a British possession, other than a Colonial Court of Admiralty within the meaning of the



Colonial Courts of Admiralty Act, 1890, remuneration, at a rate not exceeding five hundred pounds a year, payable out of money provided by Parliament, subject to such regulations as seem meet.

(2) A judge to whom remuneration is so granted shall not be entitled to any further emolument, arising from fees or otherwise, in respect of prize business transacted in his court.

(3) An account of all such fees shall be kept by the registrar of the court, and the amount thereof shall be carried to and form part of the Consolidated Fund of the United Kingdom.

7. The registrar of every prize court in a British possession shall, on the first day of January and first day of July in every year, make out a return (in such form as the Admiralty from time to time direct) of all cases adjudged in the court since the last half-yearly return, and shall with all convenient speed send the same to the Admiralty registrar of the Probate, Divorce, and Admiralty Division of the High Court, who shall keep the same in the Admiralty registry of that Division, and who shall, as soon as conveniently may be, send a copy of the returns of each half year to the Admiralty, and the Admiralty shall lay the same before both Houses of Parliament.

8. If any Colonial Court of Admiralty within the meaning of the Colonial Courts of Admiralty Act, 1890, is authorised under this Act or otherwise to act as a prize court, all fees arising in respect of prize business transacted in the court shall be fixed, collected, and applied in like manner as the fees arising in respect of the Admiralty business of the court under the first mentioned Act.

### *Appeals.*

9.—(1) Any appeal from the High Court when acting as a prize court, or from a prize court in a British possession, shall lie only to a court (to be called the Supreme Prize Court) consisting of such members for the time being of the Judicial Committee of the Privy Council as may be nominated by His Majesty for that purpose.

(2) The Supreme Prize Court shall be a court of record with power to take evidence on oath, and the seal of the court shall be such as the Lord Chancellor may from time to time direct.

(3) Every appeal to the Supreme Prize Court shall be heard before not less than three members of the court sitting together.

(4) The registrar and other officers for the time being of the Judicial Committee of the Privy Council shall be registrar and officers of the Supreme Prize Court.

10.—(1) An appeal shall lie to the Supreme Prize Court from any order or decree of a prize court, as of right in case of a final decree, and in other cases with the leave of the court making the order or decree or of the Supreme Prize Court.

(2) Every appeal shall be made in such manner and form and subject to such conditions and regulations (including regulations as to fees, costs, charges, and expenses) as may for the time being be directed by Order in Council.

11. The Supreme Prize Court shall have jurisdiction to hear and determine any such appeal, and may therein exercise all such powers as are under this Act vested in the High Court, and all such powers as were wont to be exercised by the Commissioners of Appeal or by the Judicial Committee of the Privy Council in prize causes.

#### *Rules of Court.*

12.—His Majesty in Council may make rules of court for regulating, subject to the provisions of this Act, the procedure and practice of the Supreme Prize Court and of the prize courts within the meaning of this Act, and the duties and conduct of the officers thereof, and of the practitioners therein, and for regulating the fees to be taken by the officers of the courts, and the costs, charges, and expenses to be allowed to the practitioners therein.

#### *Officers of Prize Courts.*

13. It shall not be lawful for any registrar, marshal, or other officer of the Supreme Prize Court or of any other prize court, directly or indirectly to act or be in any manner concerned as advocate, proctor, solicitor, or agent, or otherwise, in any prize appeal or cause.

14. The Public Authorities Protection Act, 1893, shall apply to any action, prosecution, or other proceeding against any person for any act done in pursuance or execution or intended execution of this Act or in respect of any alleged neglect or default in the execution of this Act whether commenced in the United Kingdom or elsewhere within His Majesty's dominions.

#### *Continuance of Proceedings.*

15. A court duly authorised to act as a prize court during any war shall after the conclusion of the war continue so to act in relation to, and finally dispose of, all matters and things which arose during the war, including all penalties, liabilities, and forfeitures incurred during the war.

### PART II.

#### PROCEDURE IN PRIZE CAUSES.

16. Where a ship (not being a ship of war) is taken as prize, and brought into port within the jurisdiction of a prize court, she shall forthwith be delivered up to the marshal of the court, or, if there is no such marshal, to the principal officer of customs at the port, and shall remain in his custody, subject to the orders of the court.

17.—(1) The captors shall in all cases, with all practicable speed, bring the ship papers into the registry of the court.

(2) The officer in command, or one of the chief officers of the capturing ship, or some other person who was present at the capture and saw the ship papers delivered up or found on board, shall make oath that they are brought in as they were taken, without fraud, addition, subduction, or alteration, or else shall account on oath to the satisfaction of the court for the absence or altered condition of the ship papers or any of them.

(3) Where no ship papers are delivered up or found on board the captured ship, the officer in command, or one of the chief officers of the capturing ship, or some other person who was present at the capture, shall make oath to that effect.

18. The captors shall also, unless the court otherwise directs, with all practicable speed after the captured ship is brought into port, bring a convenient number of the principal persons belonging to the captured ship before the judge of the court or some person authorized in this behalf, by whom they shall be examined on oath.

19. The court may, if it thinks fit, at any time after a captured ship has been appraised direct that the ship be delivered up to the claimant on his giving security to the satisfaction of the court to pay to the captors the appraised value thereof in case of condemnation.

20. The court may at any time, if it thinks fit, on account of the condition of the captured ship, or on the application of a claimant, or on or after condemnation, order that the captured ship be appraised (if not already appraised), and be sold.

21. Where a ship has been taken as prize, a prize court may award compensation in respect of the capture notwithstanding that the ship has been released, whether before or after the institution of any proceedings in the court in relation to the ship.

22.—(1) The provisions of this Part of this Act relating to ships shall extend and apply, with the necessary adaptations, to goods taken as prize.

(2) The provisions of this Part of this Act shall have effect subject to any rules of court dealing with the subject matter thereof.

### PART III.

#### INTERNATIONAL PRIZE COURT.

23.—(1) In the event of an International Prize Court being constituted in accordance with the said Convention or with any Convention amending the same (hereinafter referred to, as the International Prize Court), it shall be lawful for His Majesty from time to time to appoint a judge and deputy judge of the court.

(2) A person shall not be qualified to be appointed by His Majesty a judge or deputy judge of the court unless he has been, at or before the time of his appointment, the holder, for a period of not less than two years, of some one or more of the offices described as high judicial offices by the Appellate Jurisdiction Act, 1876, as amended by any subsequent enactment.

24. *Any sums required for the payment of any contribution towards the general expenses of the International Prize Court payable by His Majesty under the said Convention shall be charged on and paid out of the Consolidated Fund and the growing proceeds thereof.*

25. In cases to which this Part of this Act applies an appeal from the Supreme Prize Court shall lie to the International Prize Court.

26. If in any case to which this Part of this Act applies final judgment is not given by the prize court, or on appeal, by the Supreme Prize Court, within two years from the date of the capture, the case may be transferred to the International Prize Court.

27. His Majesty in Council may make rules regulating the manner in which appeals and transfers under this Part of this Act may be made and with respect to all such matters (including fees, costs, charges, and expenses) as appear to His Majesty to be necessary for the purpose of such appeals and transfers, or to be incidental thereto or consequential thereon.

28. The High Court and every prize court in a British Possession shall enforce within its jurisdiction all orders and decrees of the International Prize Court in appeals and cases transferred to the court under this Part of this Act.

29. This Part of this Act shall apply only to such cases and during such period as may for the time being be directed by Order in Council, and His Majesty may by the same or any other Order in Council apply this Part of this Act subject to such conditions, exceptions and qualifications as may be deemed expedient.

#### PART IV.

#### PRIZE SALVAGE AND PRIZE BOUNTY.

##### *Prize Salvage.*

30. Where any ship or goods belonging to any of His Majesty's subjects, after being taken as prize by the enemy, is or are retaken from the enemy by any of His Majesty's ships of war, the same shall be restored by decree of a prize court to the owner, on his paying as prize salvage one eighth part of the value of the prize, to be decreed and ascertained by the court, or such sum not exceeding

one eighth part of the estimated value of the prize as may be agreed on between the owner and the re-captors, and approved by order of the court :

Provided that—

- (a) where the re-capture is made under circumstances of special difficulty or danger, the prize court may, if it thinks fit, award to the re-captors as prize salvage a larger part than one eighth part, but not exceeding in any case one fourth part, of the value of the prize ; and
- (b) where a ship after being so taken is set forth or used by any of His Majesty's enemies as a ship of war this provision for restitution shall not apply, and the ship shall be adjudicated on as in other cases of prize.

**31.**—(1) Where a ship belonging to any of His Majesty's subjects, after being taken as prize by the enemy, is retaken from the enemy by any of His Majesty's ships of war, she may, with the consent of the re-captors, prosecute her voyage, and it shall not be necessary for the re-captors to proceed to adjudication till her return to a port of His Majesty's dominions.

(2) The master or owner, or his agent, may, with the consent of the re-captors, unload and dispose of the goods on board the ship before adjudication.

(3) If the ship does not, within six months, return to a port of His Majesty's dominions, the re-captors may nevertheless institute proceedings against the ship or goods in the High Court, or in any prize court in a British possession, and the court may thereupon award prize salvage as aforesaid to the re-captors, and may enforce payment thereof, either by warrant of arrest against the ship or goods, or in the same manner as a judgment of the court in which the proceedings are instituted may be enforced.

#### *Prize Bounty.*

**32.** If, in relation to any war, His Majesty is pleased to declare, by proclamation or Order in Council, his intention to grant prize bounty to the officers and crews of his ships of war, then such of the officers and crew of any of His Majesty's ships of war as are actually present at the taking or destroying of any armed ship of any of His Majesty's enemies shall be entitled to have distributed among them as prize bounty a sum calculated at such rates and in such manner as may be specified in the proclamation or Order in Council.

**33.**—(1) A prize court shall make a decree declaring the title of the officers and crew of His Majesty's ship to the prize bounty, and stating the amount thereof.

(2) The decree shall be subject to appeal as other decrees of the court.

## PART V.

## SPECIAL CASES OF JURISDICTION.

34. Where, in an expedition of any of His Majesty's naval or naval and military forces against a fortress or possession on land goods belonging to the state of the enemy, or to a public trading company of the enemy exercising powers of government, are taken in the fortress or possession, or a ship is taken in waters defended by or belonging to the fortress or possession, a prize court shall have jurisdiction as to the goods or ships so taken, and any goods taken on board the ship, as in case of prize.

35. Where any ship or goods is or are taken by any of His Majesty's naval or naval and military forces while acting in conjunction with any forces of any of His Majesty's allies, a prize court shall have jurisdiction as to the same as in case of prize, and shall have power, after condemnation, to apportion the due share of the proceeds to His Majesty's ally, the proportionate amount and the disposition of which share shall be such as may from time to time be agreed between His Majesty and His Majesty's ally.

36.—(1) In any case where a petition of right under the Petitions of Right Act, 1860, is presented and the subject-matter of the petition or any material part thereof arises out of the exercise of any belligerent right on behalf of the Crown, or would be cognisable in a prize court within His Majesty's dominions if the same were a matter in dispute between private persons, the petition may, if the subject thinks fit, be intituled in the High Court as a prize court.

(2) Any petition of right under the last-mentioned Act, whether intituled in the High Court or not, may be prosecuted in that Court if the Lord Chancellor thinks fit so to direct.

(3) The provisions of this Act relative to appeal, and to the making of orders for regulating the procedure and practice of the High Court as a prize court, shall extend to the case of any such petition of right intituled or directed to be prosecuted in that Court; and, subject thereto, all the provisions of the Petitions of Right Act, 1860, shall apply with such adaptations as may be necessary in the case of any such petition of right; and for the purposes of this section the terms "court" and "judge" in that Act shall respectively be understood to include the High Court as a prize court and the judges thereof, and other terms shall have the respective meanings given to them in that Act.

## PART VI.

## OFFENCES.

37. A prize court, on proof of any offence against the law of nations, or against this Act, or any Act relating to naval discipline,

or against any Order in Council or royal proclamation, or of any breach of His Majesty's instructions relating to prize, or of any act of disobedience to the orders of the Admiralty, or to the command of a superior officer, committed by the captors in relation to any ship or goods taken as prize, or in relation to any person on board any such ship, may, on condemnation, reserve the prize to His Majesty's disposal, notwithstanding any grant that may have been made by His Majesty in favour of captors.

38. If any person wilfully and corruptly swears, declares, or affirms falsely in any prize cause or appeal, or in any proceeding under this Act, or in respect of any matter required by this Act to be verified on oath, or suborns any other person to do so, he shall be deemed guilty of perjury, or of subornation of perjury (as the case may be), and shall be liable to be punished accordingly.

39. If the master or other person having the command of any British ship under the convoy of any of His Majesty's ships of war, wilfully disobeys any lawful signal, instruction, or command of the commander of the convoy, or without leave deserts the convoy, he shall be liable to be proceeded against in the High Court at the suit of His Majesty in His office of Admiralty, and upon conviction to be fined, in the discretion of the Court, any sum not exceeding five hundred pounds, and to suffer imprisonment for such time, not exceeding one year, as the Court may adjudge.

## PART VII.

### MISCELLANEOUS PROVISIONS.

#### *Ransom.*

40.—(1) His Majesty in Council may, in relation to any war, make such orders as may seem expedient according to circumstances for prohibiting or allowing, wholly or in certain cases or subject to any conditions or regulations or otherwise as may from time to time seem meet, the ransoming or the entering into any contract or agreement for the ransoming of any ship or goods belonging to any of His Majesty's subjects, and taken as prize by any of His Majesty's enemies.

(2) Any contract or agreement entered into, and any bill, bond, or other security given for ransom of any ship or goods, shall be under the exclusive jurisdiction of the High Court as a prize court (subject to appeal to the Supreme Prize Court), and if entered into or given in contravention of any such order in Council shall be deemed to have been entered into or given for an illegal consideration.

(3) If any person ransoms or enters into any contract or agreement for ransoming any ship or goods, in contravention of any such

Order in Council, he shall for every such offence be liable to be proceeded against in the High Court at the suit of His Majesty in His office of Admiralty, and on conviction to be fined, in the discretion of the Court, any sum not exceeding five hundred pounds.

*Customs Duties and Regulations.*

41.—(1) All ships and goods taken as prize and brought into a port of His Majesty's dominions shall be liable to and be charged with the same rates and charges and duties of customs as under any Act relating to the customs in force at the port may be chargeable on other ships and goods of the like description.

(2) All goods brought in as prize which would on the voluntary importation thereof be liable to forfeiture, or subject to any restriction, under the laws relating to the customs, shall be deemed to be so liable and subject, unless the Customs authority see fit to authorise the sale or delivery thereof for home use or exportation, unconditionally or subject to such conditions and regulations as they may direct.

42. Where any ship or goods taken as prize is or are brought into a port of His Majesty's dominions, the master or other person in charge or command of the ship which has been taken or in which the goods are brought shall, on arrival at such port, bring to at the proper place of discharge, and shall, when required by any officer of customs, deliver an account in writing under his hand concerning such ship and goods, giving such particulars relating thereto as may be in his power, and shall truly answer all questions concerning such ship or goods asked by any such officer, and in default shall forfeit a sum not exceeding one hundred pounds, such forfeiture to be enforced as forfeitures for offences against the laws relating to the customs in force at the port are enforced, and every such ship shall be liable to such searches as other ships are liable to, and the officers of the customs may freely go on board such ship and bring to the King's or other warehouse any goods on board the same, subject, nevertheless, to such regulations in respect of ships of war belonging to His Majesty as shall from time to time be issued by His Majesty.

43. Goods taken as prize may be sold either for home consumption or for exportation; and if in the former case the proceeds thereof, after payment of duties of customs, are insufficient to satisfy the just and reasonable claims thereon, the Customs authority may remit the whole or such part of the said duties as they see fit.

*Capture by Ship other than a Ship of War.*

44. Any ship or goods taken as prize by any of the officers and crew of a ship other than a ship of war of His Majesty shall, on condemnation, belong to His Majesty in His office of Admiralty.



*Supplemental.***45.** Nothing in this Act shall—

- (1) give to the officers and crew of any of His Majesty's ships of war any right or claim in or to any ship or goods taken as prize or the proceeds thereof, it being the intent of this Act that such officers and crews shall continue to take only such interest (if any) in the proceeds of prizes as may be from time to time granted to them by the Crown; or
- (2) affect the operation of any existing treaty or convention with any foreign power; or
- (3) take away or abridge the power of the Crown to enter into any treaty or convention with any foreign power containing any stipulation that may seem meet concerning any matter to which this Act relates; or
- (4) take away, abridge, or control, further or otherwise than as expressly provided by this Act, any right, power, or prerogative of His Majesty the King in right of His Crown, or in right of His office of Admiralty, or any right or power of the Admiralty; or
- (5) take away, abridge, or control, further or otherwise than as expressly provided by this Act, the jurisdiction or authority of a prize court to take cognizance of and judicially proceed upon any capture, seizure, prize, or reprisal of any ship or goods, and to hear and determine the same, and, according to the course of Admiralty and the law of nations, to adjudge and condemn any ship or goods, or any other jurisdiction or authority of or exercisable by a prize court.

**46.**—(1) His Majesty in Council may from time to time make such Orders in Council as seem meet for the better execution of this Act.

- (2) Every Order in Council under this Act shall be notified in the London Gazette, and shall be laid before both Houses of Parliament within thirty days after the making thereof, if Parliament is then sitting, and, if not, then within thirty days after the next meeting of Parliament, and shall have effect as if enacted in this Act.

**47.** In this Act unless the context otherwise requires—

The expression “the High Court” means the High Court of Justice in England :

The expression “any of His Majesty's ships of war” includes any of His Majesty's vessels of war, and any hired armed ship or vessel in His Majesty's service :

The expression “officers and crew” includes flag officers, com-<sup>1</sup>

manders, and other officers, engineers, seamen, marines, soldiers, and others on board any of His Majesty's ships of war :

The expression "ship" includes vessel and boat, with the tackle, furniture, and apparel of the ship, vessel, or boat :

The expression "ship papers" includes all books, papers, and other documents and writings delivered up or found on board a captured ship, and, where certified copies only of any papers are delivered to the captors, includes such copies :

The expression "goods" includes all such things as are by the course of Admiralty and law of nations the subject of adjudication as prize (other than ships) :

The expression "Customs authority" means the Commissioners or other authority having control of the administration of the law relating to customs.

42.—(1) This Act may be cited as the Naval Prize Act 1910.

(2) The enactments mentioned in the Second Schedule to this Act are hereby repealed to the extent specified in the third column of that Schedule.

## SCHEDULES.

### FIRST SCHEDULE.

#### CONVENTION RELATIVE TO THE ESTABLISHMENT OF AN INTERNATIONAL PRIZE COURT.

##### PART I.—GENERAL PROVISIONS.

*Article 1.*—The validity of the capture of a merchant ship or its cargo is decided before prize courts in accordance with the present Convention when neutral or enemy property is involved.

*Article 2.*—Jurisdiction in matters of prize is exercised in the first instance by the prize courts of the belligerent captor.

The judgments of these courts are pronounced in public or are officially notified to parties concerned who are neutrals or enemies.

*Article 3.*—The judgments of national prize courts may be brought before the International Prize Court—

(1) When the judgment of the national prize courts affects the property of a neutral power or individual ;

(2) When the judgment affects enemy property and relates to—

(a) cargo on board a neutral ship ;

(b) an enemy ship captured in the territorial waters of a neutral power, when that power has not made the capture the subject of a diplomatic claim ;

(c) a claim based upon the allegation that the seizure has been effected in violation, either of a conventional stipulation in force between the belligerent powers, or of an enactment issued by the belligerent captor.

The appeal against the judgment of the national court can be based on the ground that the judgment was wrong either in fact or in law.

*Article 4.*—An appeal may be brought—

- (1) by a neutral power, if the judgment of the national tribunals affects its property or the property of its subjects or citizens (Article 3 (1)), or if the capture of an enemy vessel is alleged to have taken place in the territorial waters of that power (Article 3 (2) (b));
- (2) by a neutral individual, if the judgment of the national court affects his property (Article 3 (1)), subject, however, to the reservation that the power to which he belongs may forbid him to bring the case before the court, or may itself undertake the proceedings in his place;
- (3) by an individual subject or citizen of an enemy power, if the judgment of the national court affects his property in the cases referred to in Article 3 (2), except that mentioned in paragraph (b).

*Article 5.*—An appeal may also be brought on the same conditions as in the preceding article, by persons belonging either to neutral states or to the enemy, deriving their rights from and entitled to represent an individual qualified to appeal, and who have taken part in the proceedings before the national court. Persons so entitled may appeal separately to the extent of their interest.

The same principle applies in the case of persons belonging either to neutral states or to the enemy, who derive their rights from and are entitled to represent a neutral power the property of which was the subject of the decision.

*Article 6.*—When, in accordance with the above Article 3, the international court has jurisdiction, the national courts cannot deal with a case in more than two instances. The municipal law of the belligerent captor shall decide whether the case may be brought before the International Court after judgment has been given in first instance or only after an appeal.

If the national courts fail to give final judgment within two years from the date of capture, the case may be carried direct to the International Court.

*Article 7.*—If a question of law to be decided is covered by a treaty in force between the belligerent captor and a power which is itself, or the subject or citizen of which is, a party to the proceedings, the court is governed by the provisions of the said treaty.

In the absence of such provisions, the court shall apply the rules of international law. If no generally recognised rule exists, the court shall give judgment in accordance with the general principles of justice and equity.

The above provisions apply equally to questions relating to the order and mode of proof.

If, in accordance with Article 3 (2) (c), the ground of appeal is the violation of an enactment issued by the belligerent captor, the court shall enforce the enactment.

The court may disregard failure to comply with the procedure laid down in the legislation of the belligerent captor, when it is of opinion that the consequences of complying therewith are unjust and inequitable.

*Article 8.*—If the court pronounces the capture of the vessel or cargo to be valid, they shall be disposed of in accordance with the laws of the belligerent captor.

If it pronounces the capture to be null, the court shall order restitution of the vessel or cargo, and shall fix, if there is occasion, the amount of the damages. If the vessel or cargo have been sold or destroyed, the court shall determine the compensation to be given to the owner on this account.

If the national prize court pronounced the capture to be null, the court can only be asked to decide as to the damages.

*Article 9.*—The contracting powers undertake to submit in good faith to the decisions of the International Prize Court and to carry them out with the least possible delay.

## PART II.—CONSTITUTION OF THE INTERNATIONAL PRIZE COURT.

*Article 10.*—The International Prize Court is composed of judges and deputy judges, who will be appointed by the contracting powers, and must all be jurists of known proficiency in questions of international maritime law, and of the highest moral reputation.

The appointment of these judges and deputy judges shall be made within six months after the ratification of the present Convention.

*Article 11.*—The judges and deputy judges are appointed for a period of six years, reckoned from the date on which the notification of their appointment is received by the administrative council established by the Convention for the pacific settlement of international disputes of the 29th July, 1899. Their appointments can be renewed.

Should one of the judges or deputy judges die or resign, the same procedure is followed in filling the vacancy as was followed in

appointing him. In this case, the appointment is made for a fresh period of six years.

*Article 12.*—The Judges of the International Prize Court are all equal in rank and have precedence according to the date on which the notification of their appointment was received (*Article 11*, paragraph 1), and if they sit by rota (*Article 15*, paragraph 2), according to the date on which they entered upon their duties. When the date is the same, the senior in age takes precedence.

The deputy judges when acting are in the same position as the judges. They rank, however, after them.

*Article 13.*—The judges enjoy diplomatic privileges and immunities in the performance of their duties and when outside their own country.

Before taking their seat, the judges must take an oath, or make a solemn affirmation before the administrative council, to discharge their duties impartially and conscientiously.

*Article 14.*—The court is composed of fifteen judges; nine judges constitute a quorum.

A judge who is absent or prevented from sitting is replaced by the deputy judge.

*Article 15.*—The judges appointed by the following contracting powers: Germany, the United States of America, Austria-Hungary, France, Great Britain, Italy, Japan, and Russia, are always summoned to sit.

The judges and deputy judges appointed by the other contracting powers sit by rota as shown in the table annexed to the present convention; their duties may be performed successively by the same person. The same judge may be appointed by several of the said powers.

*Article 16.*—If a belligerent power has, according to the rota, no judge sitting in the court, it may ask that the judge appointed by it should take part in the settlement of all cases arising from the war. Lots shall then be drawn as to which of the judges entitled to sit according to the rota shall withdraw. This arrangement does not affect the judge appointed by the other belligerent.

*Article 17.*—No judge may sit who has been a party in any way whatever to the sentence pronounced by the national courts, or has taken part in the case as counsel or advocate for one of the parties.

No judge or deputy judge may, during his tenure of office, appear as agent or advocate before the International Prize Court, nor act for one of the parties in any capacity whatever.

*Article 18.*—The belligerent captor is entitled to appoint a naval officer of high rank to sit as assessor, but with no voice in the decision. A neutral power which is a party to the proceedings, or the subject or citizen of which is a party, has the same right of

appointment; if in applying this last provision more than one power is concerned, they must agree among themselves, if necessary by lot, or the officer to be appointed.

*Article 19.*—The court elects its president and vice-president by an absolute majority of the votes cast. After two ballots, the election is made by a bare majority, and, in case the votes are equal, by lot.

*Article 20.*—The judges of the International Prize Court are entitled to travelling allowances in accordance with the regulations in force in their own country, and in addition receive, while the court is sitting or while they are carrying out duties conferred upon them by the court, a sum of 100 Netherland florins per diem.

• These payments are included in the general expenses of the court dealt with in Article 47, and are paid through the international bureau established by the Convention of the 29th July, 1899.

• The judges may not receive from their own Government or from that of any other power any remuneration in their capacity of members of the court.

*Article 21.*—The International Prize Court sits at The Hague and may not, except in circumstances beyond its control, be transferred elsewhere without the consent of the belligerents.

*Article 22.*—The Administrative Council fulfils the same functions with regard to the International Prize Court as with regard to the Permanent Court of Arbitration, but only representatives of contracting powers shall be members of it.

*Article 23.*—The International Bureau acts as a registry to the International Prize Court and shall place its offices and staff at the disposal of the Court. It has the custody of the archives and carries out the administrative work.

• The Secretary-General of the International Bureau acts as registrar.

The necessary secretaries to assist the registrar, translators and shorthand writers are appointed and sworn in by the Court.

*Article 24.*—The Court determines which language it shall use and the languages the employment of which shall be authorised before it.

The official language, however, of the national courts which have had cognisance of the case may always be employed before the Court.

*Article 25.*—Powers which are concerned in a case may appoint special agents to act as intermediaries between themselves and the Court. They may also engage counsel or advocates to defend their rights and interests.

*Article 26.*—A private person concerned in a case will be represented before the Court by an attorney, who must be either an advocate qualified to plead before a Court of Appeal or a High Court of one of the contracting states, or a lawyer practising before a similar court, or lastly, a professor of law at one of the higher teaching centres of those countries.

*Article 27.*—For the service of all notices, in particular on the parties, witnesses, or experts, the Court may apply direct to the Government of the state on the territory of which the service is to be carried out. The same principle applies in the case of steps being taken to procure evidence.

Requests for this purpose are to be executed so far as the means at the disposal of the power applied to under its municipal law, allow. They cannot be rejected unless the power in question considers them calculated to impair its sovereign rights or its safety. If the request is complied with, the fees charged must only comprise the expenses actually incurred.

The Court is equally entitled to act through the power within the territory of which it is meeting.

Notices to be given to parties in the place where the Court sits may be served through the International Bureau.

### PART III.—PROCEDURE IN THE INTERNATIONAL PRIZE COURT.

*Article 28.*—An appeal to the International Prize Court is entered by means of a written declaration made in the national Court which has already dealt with the case or addressed to the International Bureau; in the latter case the appeal may be entered by telegram.

The period within which the appeal must be entered is fixed at one hundred and twenty days, counting from the day the decision is delivered or notified (Article 2, paragraph 2).

*Article 29.*—If the notice of appeal is entered in the national Court, such Court, without considering the question whether the appeal was entered in due time, will transmit within seven days the record of the case to the International Bureau.

If the notice of appeal is sent to the International Bureau, the Bureau will immediately inform the national Court, when possible by telegraph. The latter will transmit the record as provided in the preceding paragraph.

When the appeal is brought by a neutral individual the International Bureau will immediately inform by telegraph the appellant's Government, in order to enable it to avail itself of the rights given by the second paragraph of Article 4.

*Article 30.*—In the case provided for in Article 6, paragraph 2, the notice of appeal can be addressed to the International Bureau

only. It must be entered within thirty days of the expiry of the period of two years.

*Article 31.*—If the appellant does not enter his appeal within the period laid down in Articles 28 or 30, it shall be rejected without discussion.

Provided that if he can show that he was prevented from so doing by circumstances beyond his control, and that the appeal was entered within sixty days after such circumstances had ceased to operate, the Court may, after hearing the respondent, grant relief from the effect of the above provision.

*Article 32.*—If the appeal has been entered in time, a certified copy of the notice of appeal is forthwith officially transmitted by the Court to the respondent.

*Article 33.*—If, in addition to the parties who are before the Court, there are other parties concerned who are entitled to appeal, and if, in the case referred to in Article 29, paragraph 3, the Government which has received notice of an appeal has not announced its decision, the Court, before dealing with the case, will await the expiry of the period laid down in Articles 28 or 30.

*Article 34.*—The procedure before the International Court comprises two distinct phases: the written pleadings and oral discussions.

The written pleadings consist of the deposit and exchange of cases, counter-cases, and, if necessary, of replies, of which the order is fixed by the Court, as also the periods within which they must be delivered. The parties annex thereto all papers and documents of which they intend to make use.

A certified copy of every document produced by one party must be communicated to the other party through the medium of the Court.

*Article 35.*—After the close of the pleadings, a public sitting is held on a day fixed by the Court.

At this sitting the parties state their view of the case both as to the law and as to the facts.

The Court may, at any stage of the proceedings, suspend the speeches of counsel, either at the request of one of the parties, or on their own initiative, in order that supplementary evidence may be obtained.

*Article 36.*—The International Court may order the supplementary evidence to be taken either in the manner provided by Article 27, or before itself, or one or more of the members of the Court, provided that this can be done without resort to compulsion or intimidation.

If steps are to be taken for the purpose of obtaining evidence by



members of the Court outside the territory where it is sitting, the consent of the foreign Government must be obtained.

*Article 37.*—The parties receive notice to attend every stage of the proceedings and receive certified copies of the minutes.

*Article 38.*—The discussions are under the direction of the president or vice-president, or, in case they are absent or cannot act, of the senior judge present.

The judge appointed by a belligerent party may not preside.

*Article 39.*—The discussions take place in public, subject to the right of a Government which is a party to the case to demand that they be held in private.

They are recorded in minutes. These minutes are signed by the president and registrar, and are the only authentic record.

*Article 40.*—If a party does not appear, despite the fact that he has been duly cited, or if a party fails to comply with some step within the period fixed by the Court, the case proceeds without that party, and the Court gives judgment in accordance with the material at its disposal.

*Article 41.*—The Court officially notifies to the parties judgments or orders made in their absence.

*Article 42.*—The Court takes into consideration, in arriving at its decision all the facts, evidence, and verbal statements.

*Article 43.*—The Court considers its decisions in private and the proceedings remain secret.

All questions are decided by a majority of the judges present. If the number of judges is even and equally divided, the vote of the junior judge in the order of precedence laid down in Article 12, paragraph 1, is not counted.

*Article 44.*—The judgment of the Court must state the reasons on which it is based. It recites the names of the judges taking part in it, and also of the accessors, if any; it is signed by the president and registrar.

*Article 45.*—The judgment is delivered in open court, the parties concerned being present or duly summoned to attend; the judgment is officially communicated to the parties.

When this communication has been made, the Court transmits to the National Prize Court the record of the case, together with copies of the various decisions arrived at and of the minutes of the proceedings.

*Article 46.*—Each party pays its own costs.

The party against whom the Court decides bears, in addition, the costs of the trial, and also pays one per cent. of the value of the

subject-matter of the case as a contribution to the general expenses of the International Court. The amount of these payments is fixed in the judgment of the Court.

If the appeal is brought by an individual, he will furnish the International Bureau with security to an amount fixed by the Court, for the purpose of guaranteeing the eventual fulfilment of the two obligations mentioned in the preceding paragraph. The Court is entitled to postpone the opening of the proceedings until the security has been furnished.

*Article 47.*—The general expenses of the International Prize Court are borne by the contracting powers in proportion to their share in the composition of the Court as laid down in Article 15 and in the annexed table. The appointment of deputy judges does not involve any contribution.

The administrative council applies to the powers for the funds requisite for the working of the Court.

*Article 48.*—When the Court is not sitting, the duties conferred upon it by Article 32, Article 34, paragraphs 2 and 3, Article 35, paragraph 1, and Article 46, paragraph 3, are discharged by a delegation of three judges appointed by the Court. This delegation decides by a majority of votes.

*Article 49.*—The Court itself draws up its own rules of procedure, which must be communicated to the contracting powers.

It will meet to draw up these rules within a year of the ratification of the present Convention.

*Article 50.*—The Court may propose modifications in the provisions of the present Convention concerning procedure. These proposals are communicated, through the medium of the Netherland Government, to the contracting powers, which will confer together as to the measures to be adopted.

#### PART IV.—FINAL PROVISIONS.

*Article 51.*—The present Convention does not apply as of right except when the belligerent powers are all parties to the Convention.

It is further understood that an appeal to the International Prize Court can only be brought by a contracting power or the subject or citizen of a contracting power.

An appeal is only admitted under Article 5 when both the owner and the person entitled to represent him are equally contracting powers or the subjects or citizens of contracting powers.

*Article 52.*—The present Convention shall be ratified and the ratifications shall be deposited at The Hague as soon as all the

powers mentioned in Article 15 and in the table annexed are in a position to do so.

The deposit of the ratifications shall take place, in any case, on the thirtieth June, nineteen hundred and nine, if the powers which are ready to ratify furnish nine judges and nine deputy judges to the Court, duly qualified to constitute a Court. If not, the deposit shall be postponed until this condition is fulfilled.

A minute of the deposit of the ratifications shall be drawn up, of which a certified copy shall be forwarded, through the diplomatic channel, to each of the powers referred to in the first paragraph.

*Article 53.*—The powers referred to in Article 15 and in the table annexed are entitled to sign the present Convention up to the date of the deposit of the ratifications contemplated in paragraph 2 of the preceding Article.

After this deposit, they can at any time accede to it, purely and simply. A power wishing to accede, notifies its intention in writing to the Netherland Government, transmitting to it at the same time the act of accession, which shall be deposited in the archives of the said Government. The latter shall send, through the diplomatic channel, a certified copy of the notification and of the act of accession to all the powers, referred to in the preceding paragraph, informing them of the date on which it has received the notification.

*Article 54.*—The present Convention shall come into force six months from the deposit of the ratifications contemplated in Article 52, paragraphs 1 and 2.

The accessions shall take effect sixty days after the notification of such accession has been received by the Netherland Government, or as soon as possible on the expiry of the period contemplated in the preceding paragraph.

The International Court shall, however, have jurisdiction to deal with prize cases decided by the National Courts at any time after the deposit of the ratifications or of the receipt of the notification of the accessions. In such cases, the period fixed in Article 28, paragraph 2, shall only be reckoned from the date when the Convention comes into force as regards a power which has ratified or acceded.

*Article 55.*—The present Convention shall endure for twelve years from the date at which it comes into force, as determined by Article 54, paragraph 1, even for the powers acceding to it subsequently.

There shall be tacit prolongation for the term of six years unless this Convention is denounced.

Denunciation must be notified in writing, one year at least before the expiry of each of the periods mentioned in the two preceding

paragraphs, to the Netherland Government, which will inform all the other contracting powers.

The denunciation shall only operate in respect of the denouncing power. The Convention shall remain in force in the case of the other contracting powers, provided that their share in the appointment of judges be still sufficient to allow the work of the Court to be discharged by nine judges and nine deputy judges.

*Article 56.*—In case the present Convention is not in operation as regards all the powers referred to in Article 15 and the annexed table, the Administrative Council shall draw up a list on the lines of that Article and table of the judges and deputy judges through whom the contracting powers share in the composition of the Court. The times allotted by the said table to judges who are summoned to sit in rota will be redistributed between the different years of the six-year period in such a way that, as far as possible, the number of the judges of the Court in each year shall be the same. If the number of deputy judges is greater than that of the judges, the number of the latter can be completed by deputy judges chosen by lot among those powers which do not nominate a judge.

The list drawn up in this way by the Administrative Council shall be notified to the contracting powers. It shall be revised when the number of these powers is modified as the result of accessions or denunciations.

The change resulting from an accession is not made until the first January after the date on which the accession takes effect, unless the acceding power is a belligerent power, in which case it can demand to be at once represented in the Court, the provision of Article 16 being, moreover, applicable if necessary.

When the total number of judges is less than eleven, seven judges form a quorum.

*Article 57.*—Two years before the expiry of each period referred to in paragraphs 1 and 2 of Article 55, any contracting power may demand a modification of the provisions of Article 15 and of the annexed table, as regards its participation in the composition of the Court. The demand shall be addressed to the Administrative Council, which will examine it and submit to all the powers proposals as to the measures to be adopted. The powers shall inform the Administrative Council of their decision with the least possible delay. The result should be communicated at once, and one year and thirty days at least before the expiry of the said period of two years, to the power which made the demand.

In such circumstances, the modifications adopted by the powers shall come into force from the commencement of the fresh period.

*Annex to Article 15.*

**Distribution of Judges and Deputy Judges by Countries for  
each Year of the period of Six Years.**

Judges.	Deputy Judges.	Judges.	Deputy Judges.
<b>FIRST YEAR.</b>		<b>FOURTH YEAR.</b>	
1. Argentina -	Paraguay.	1. Brazil - -	Guatemala.
2. Colombia -	Bolivia.	2. China - -	Turkey.
3. Spain - -	Spain.	3. Spain - -	Portugal.
4. Greece - -	Roumania.	4. Peru - -	Honduras.
5. Norway - -	Sweden.	5. Roumania -	Greece.
6. Netherlands -	Belgium.	6. Sweden - -	Denmark.
7. Turkey - -	Persia.	7. Switzerland -	Netherlands.
<b>SECOND YEAR.</b>		<b>FIFTH YEAR.</b>	
1. Argentina -	Panama.	1. Belgium - -	Netherlands.
2. Spain - -	Spain.	2. Bulgaria -	Montenegro.
3. Greece - -	Roumania.	3. Chile - -	Nicaragua.
4. Norway - -	Sweden.	4. Denmark -	Norway.
5. Netherlands -	Belgium.	5. Mexico - -	Cuba.
6. Turkey - -	Luxemburg.	6. Persia - -	China.
7. Uruguay - -	Costa Rica.	7. Portugal - -	Spain.
<b>THIRD YEAR.</b>		<b>SIXTH YEAR.</b>	
1. Brazil - -	Santo Domingo.	1. Belgium - -	Netherlands.
2. China - -	Turkey.	2. Chile - -	Salvador.
3. Spain - -	Portugal.	3. Denmark -	Norway.
4. Netherlands -	Switzerland.	4. Mexico - -	Ecuador.
5. Roumania -	Greece.	5. Portugal -	Spain.
6. Sweden - -	Denmark.	6. Servia - -	Bulgaria.
7. Venezuela -	Haiti.	7. Siam - -	China.

**SECOND SCHEDULE.**

Session and Chapter.	Short Title.	Extent of Repeal.
27 & 28 Vict. c. 25.	The Naval Prize Act, 1864.	The whole Act.
54 & 55 Vict. c. 53.	The Supreme Court of Judicature Act, 1891.	Section four.
57 & 58 Vict. c. 39.	The Prize Courts Act, 1894.	The whole Act except so much of section four as relates to courts other than prize courts.

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